CHAPTER V

FINANCIAL RELATIONS

Federalism in its nature involves certain basic financial problems. The multiplicity of taxing and spending authorities in a federation may raise, as the experience of the older federations reveals, major administrative difficulties In the United States, for instance, the overlapping and conflict of tax jurisdiction between the two layers of authority led to immense inconvenience and increase in costs of tax administration[1] Besides, the close integration of Central and State financial policies, which is a necessary fiscal objective in a planned economy, is difficult to attain in a system with multiple fiscal authorities The State fiscal policies, for instance, may not accord with the Central or national fiscal policy, and this introduces serious stresses in national economy.

The second problem associated with federalism is one of imbalance *as regards financial resources between the Centre and the* States[2] A desirable federal ideal is allocation of resources between the two sets of authority corresponding to their functions But this is hardly a realizable ideal, because nature is not so accommodating[3] The imbalance of finance which arises from assignment of some expanding sources of huge income such as customs and excise duties to the Centre in the Constitution is sought to be removed by transfer of funds from the Centre to the States. But the dependence of the States upon the Centre for large financial assistance for carrying out their constitutionally allocated functions involves the possible danger of compromise with their autonomy In case the States prefer not to barter away their independence in lieu of central aid, the discharge of their functions may suffer in both quantity and quality. Hence the problem is how to reduce Centre-State financial imbalance without any

[1] *Report of the Commission on Intergovernmental Relations*, pp. 103 04

[2] A H Birch in *Federalism and Economic Growth in Underdeveloped Countries*, p 114

[3] Sir Cecil H Kisch's Foreward to S P Adarkar, *Principles and Problems of Federal Finance*, xii

serious loss of State autonomy.

The third is the problem of imbalance between different regions of a federation. This imbalance is the product of differences in levels of economic development which lead to marked disparities in income and wealth of the constituent units. The inter-regional imbalance may stand in the way of attaining the welfare state ideal of national minimum. Besides, the inter-regional imbalance, while giving rise to mutual jealousy and tension among the component units, inevitably constitutes a perennial source of political instability. Hence, in the interest of fiscal equity and political stability the Centre should enter the field as a equilibrating agency and should offset the process of inter-regional imbalance. But in a developing economy a fiscal policy, whose supreme aim is the attainment of inter-regional balance, may come into conflict with the aim of optimum economic growth The transfer of funds from the economically rich regions to the low income areas may result in declining rate of marginal productivity of those transferred funds owing to the paucity of the productive resources in the low income areas.[4] Thus, in a federation, which is involved in a process of growth, the problem is one of promoting inter-regional balance through various kinds of financial assistance to the States in a way that does not hamper the accelerated rate of economic growth.

The allocation of resources between the Centre and the States, as we have already observed, does not equate in practice with the constitutional division of functions. The approach to the knotty problem of resources distribution in a federation ought to be based upon a rational calculation of the practical needs which comprise administrative, fiscal and the country's over-all economic needs. A single formula or slogan cannot solve the problem. Prof. Adarkar lays down three principles which, in his opinion, should guide the working of federal financial relations These are (*a*) independence and responsibility, (*b*) adequacy and elasticity, and (*c*) administrative economy.[5] The first principle demands sufficient autonomy of each of the governments in the matter of revenue collection That is, both should have independent sources of income. The second principle emphasises the fact that income for each government should be sufficient to enable it to discharge

[4] R. N Tripathy, *Federal Finance in a Developing Economy*, Ch. 1

[5] *Principles and Problems of Federal Finance*, pp. 218-24

INTER-GOVERNMENTAL RELATIONS IN INDIA

A Study of Indian Federalism

AMAL RAY

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To
My Wife, SWAPNA
and
Our Sweet RINKI

PREFACE

This book is based on my doctoral dissertation entitled 'Union-State Relations in India' which has been approved by the University of Calcutta. Its primary concern is the working relationships between the Centre and the States which have grown up in India around the formal-constitutional framework.

Federation as a system of government involves a certain pattern of relationship between the central government and the regional governments. Such relationship is amenable to changes in environmental situations. Thus a change in the latter has its repercussion on the former. Under the impact of newly emergent forces, important changes have taken place in recent times in inter-governmental relationships in the traditional homes of federalism. Granted these changes, either the traditional concept of federalism has to be re-woven, or the emergence of an altogether new form of government has to be recognised. The discussions in this book have kept in view this apparent predicament of the federal theory and maintained that although unitarianism is casting its shadow on contemporary federalism, the situation hardly calls for the recognition of a new form of government. Rather it entails the need for a restatement of the essentials of federalism. In this book, the federal system of India has been examined in the light of these discussions.

Although, 'law is happiest when dealing with a static environment', new forces continually emerge in the social matrix to introduce an element of dynamism in the environment. This is particularly true of India where a highly diversified society is currently involved in a process of quick change. Here, an attempt has been made to spotlight the operative forces that have been instrumental in developing and directing the shape of constitutional relationships between the Union and the States in India The emphasis in this study has been on the forces and the processes rather than the formal-legal structure of Indian federalism Also, in order to obtain a proper understanding of federalism in this country, it has been found necessary to follow the comparative

method—to examine Indian federalism in the light of the theory *of federation and its workings in other countries.*

I take this opportunity to express my deep sense of gratitude to Dr A C. Banerjee, the Dean of the Faculty of Arts, Calcutta University, who was kind enough to help and guide me at every stage of my work. I also recall with delight the illuminating discussions I was privileged to have with Mr. K. K. Hajara, I.C.S., the former Legal Remembrancer, Government of West Bengal, and Dr N C. Roy, the former Professor of Public Administration, Calcutta University To Rev. Father Huart of the St. Xavier's College, Calcutta, I owe a word of gratitude for his constant help and encouragement.

Calcutta AMAL RAY
25 July 1966

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CHAPTER I

AN APPROACH TO FEDERALISM

It is a truism that Union-State relations constitute the core of federalism. The problem here is What are precisely the tests or criteria of federalism? We can begin our discussion by an analysis of the approach of the traditionalists on this subject. In a federation, as the traditionalists argue, both the Union and the States are independent and coordinate authorities enjoying plenary powers within their jurisdictions set by the Constitution, and each authority should be confined to its own sphere. As A. V. Dicey observes, "Federalism means the distribution of the force of the state among a number of coordinate bodies each originating in and controlled by the constitution".[1] The details of the division of powers vary in different federal constitutions, but the principle on which it rests is, according to the traditionalists, quite clear. K. C. Wheare writes, "By the federal principle I mean the method of dividing powers so that the general and regional governments are each within a sphere, coordinate and independent".[2] This line of thinking is clearly manifest in the writing of M. Venkatrangaiya, the renowned Indian author on federalism. Venkatrangaiya, while analysing the nature of federalism, observes: ". . . the governments—Central and Local—must have complete freedom from mutual control and encroachment in the determination of their policies and the way in which they are exercised. It is this freedom that is the soul of federalism".[3] All these writers, who have built up a traditional model, discover the essence of federalism in complete independence of the centre and the constituent units from mutual control, and they emphasise that each government should be restricted within the limits of its own jurisdiction. Their frame of reference is the Constitution of the United States of 1787 with accompanying

[1] *Law of the Constitution*, p. 157

[2] *Federal Government*, p. 11. See also "What Federal Government Is" by Wheare in *Studies in Federal Planning* (edited by Patrick Ransome) specially, pp. 23-24 and pp. 33-38

[3] *Federalism in Government*, p. 17. Venkatrangaiya appears to have modified his point of view in *Competitive and Co-operative Trends in Federalism* (1951)

amendments[4] In the light of these criteria of federalism, Wheare distinguishes between federal (pure or normal) and quasi-federal constitutions The Constitution of the United States is, to him, an example of pure or unalloyed federal constitution, while the Constitution of India of 1950, because of its centralised bias, is quasi-federal in nature[5]

The traditional approach is essentially juridical in which the accent is on legal or constitutional structure of federalism. One great limitation of the traditionalists' approach is that they do not look beyond the dry bones of a constitution to explore the myriad social and political forces that determine its form and working A constitution is largely the product of myriad forces that operate in the social matrix When these forces change and shift, the constitution *ipso facto* changes In some cases the constitution may not formally change, but it perceptibly changes in its operative process As the forces that determine the form *and operation of a constitution are not adequately explored in* the traditional approach, the flow and flux of socio-political conditions are more or less overlooked The paradox that inevitably arises is that the traditionalists apply the same criteria in their examination of the nature of American and Indian federalism, although the former precedes the latter by more than 160 years. The social scene, the economic framework, the political forces and the popular urges and cravings of India of 1950 combine together to produce an "environment of federalism" which is basically different from that of America of 1787 As the traditionalists virtually ignore the important fact of the dynamics of social conditions, their approach becomes essentially inflexible, and their theory of federalism develops into a rigid doctrine of some unchanging categories unaccommodating to changing environment.

It has already been observed that the frame of reference of the traditionalists has always been the Constitution of the United States of 1787. What was the character of the American society at that time? The economy was essencially simple, free from complexities of later-day nation-wide industrial concentrations; the social urges of the people had not then grown into a popular *craving for a 'service' state The state was a 'police' state, and*

[4] Dicy, *op cit*, p 140 and Wheare, *op cit*, pp. 1-5
[5] Wheare, *Ibid*, p 28

it had to perform few functions. There had been no growth of national parties, and hence no conscious effort was made to unify the territorially segmented political forces In a country with simple economy the economic problems were essentially intra-State, and seldom transcended the local boundaries Because of the narrow view of the the state functions in the eighteenth-century America, "it was easy to make a distinction between local affairs, which could appropriately be handled by the states, and the matters of general concern, which should be delegated to the central authority".[6] Moreover, in the absence of national parties the political forces were highly fragmented and essentially local in operation

The forces listed above determined the nature of American federalism, and naturally the founding fathers of the constitution could afford to provide for two sets of authority, the general and the local, both coordinate and independent in their respective spheres But with the emergence of new situations, the mould in which their ideas were cast has broken down[7] In the wake of the industrial revolution, technological reorientation everywhere led to a complete transformation of the economy Modern economy which is characterised by the wide prevalance of large industrial concentrations is highly complex, and consequently, the economic problems have transcended the State boundaries As the problems are inter-State, so their solution demands national action and authority. As J. Rivero observes, " the almost invariable trend of economic developments in the last hundred years has been towards a concentration of power resulting in a strengthening of the central authority and the development of bonds of national community beyond the frontiers of the individual states".[8] The tremendous development of transport facilities has aided the development of national markets and produced inter-State mobility in trade and

[6] 'Prerequisites of Balance', Article by John Fischer in *Federalism Mature and Emergent*, edited by Arthur W. Macmahon, p 62

[7] As *Adolf A. Berle observes*, "Dynamic forces in American economics have engendered, and are compelling, intense evolution of the federal system in a vast area of life formerly considered outside the range of the central government. . . ." 'Evolving Capitalism and Political Federalism' in *Federalism : Mature and Emergent*, p. 73 For an illuminating discussion of the "changing environment" of American federalism see *Report on Intergovernmental Relations*, Chap I, pp. 12-19

[8] *International Social Science Bulletin*, Vol IV, Spring, 1952

commerce necessitating central control. Secondly, the democratic pressure of the organised electorate has compelled the inauguration of comprehensive social legislation, and the state has necessarily shifted its main programme from maintenance of order to promotion of welfare. Maintenance of a national minimum in respect of living standards and working conditions of the people is the basic responsibility of a government dedicated to a welfare *state ideal. Regions vary in living standards and working conditions* which tend to defeat the objective of a 'national minimum'. To correct this inter-regional imbalance the Centre has of necessity to step in, and its power is consequently augmented. The basic reason of increasing centralisation in both old and new federations under the influence of the welfare objectives is admirably described by Max Beloff: "The . . . objectives can hardly be achieved unless governments have full powers of legislation over the whole economic and fiscal field. It is for this reason that each new federation created has tended to allot more powers to the centre than its predecessors and that within every existing federation *the centralizing tendency has been steadily at work and with* ever increasing speed".[1] The third factor which has upset the traditional balance of power in the federal system is the emergence of national parties. The party system postulates national unity beneath regional differences. Parties nationalise the interests and outlook of the people. Consequently, the loyalty of individuals transcends to a remarkable extent the local boundaries, and they are gathered up into a common fellowship. When politics is not territorially factional and is animated with a spirit of national unity, the power of the national or federal government is bound to increase. Besides, finance and other considerations introduce a perceptible centripetal tendency inside a party, and the central directives determine to a great extent the functioning of the local or regional units of the party. Parties decisively influence the *working of the governmental machinery. So the centripetal* tendency inside the party produces *ipso facto* a marked centripetal tendency in the relations between the Union and the States.

The aforesaid discussion spotlights the new forces operating in the contemporary societies which have profoundly altered the social framework within which the traditional federalism emerged

[1] *Political Studies*, Vol 1, No. 2, 1953

and operated. This has set in motion a steady tendency in all the recognised federations towards increasing centralization of powers. We shall consider here three older federations—the United States of America, Switzerland, and Australia—which are regarded by the traditionalists[10] as examples of countries with federal constitutions and federal governments In the United States of America the application of the doctrine of implied powers by the Supreme Court has led to a wide extension of the powers of the national government at the expense of the States. Besides, the extensive use of the system of conditional grants has increasingly ensured national control over the States. As one American authority observes, "In America, the trend has been toward the development of a strong and powerful national government".[11] In Switzerland the dominating tendency in the evolution of its federalism has been "administrative and political centralization".[12] Similarly, in Australia a perceptible centralist direction can be observed in Commonwealth—State relations The liberal and elastic interpretation of the powers of the Commonwealth by the Australian High Court along with large-scale financial control which the grants always entail, has imparted a new look to Australian federalism.[13] The effects of centralisation have been, first, certain dilution of State autonomy and secondly, certain blurring of the boundaries of the Centre and the States.

The profound change in the environment of federalism, and the development in its working to which we have made a pointed reference above, have led some writers to conclude that federalism cannot thrive in the present century. As Karl Loewenstein observes, "'Federalism is a product of liberal thinking. It applied the (relative) freedom of the individual to the (relative) freedom of organization of territorial entities. It thrives as long as a free economy thrives".[14] As the attainment of welfare objectives has resulted in immense control of the centre over the economy, so federalism, according to this writer, finds it almost impossible to

[10] Wheare, *op. cit.*, p. 22

[11] William O. Douglas, *We the Judges*, p. 42

[12] William E. Rappard, *The Government of Switzerland*, pp. 112-19

[13] Ross Anderson in *Essays on the Australian Constitution* (Ed. R Else—Mitchell), pp. 97-130

[14] Article in *Constitutions and Constitutional Trends Since World War II*, pp. 211-13

endure F G Carnell also reaches almost the same conclusion. In his view, " federal states and welfare states do not go well together' [15]

The above view is based upon the assumption that federation as a system of government has no capacity for growth and adaptation. Even accepting the contention that federalism is the child of liberalism, it is not correct to conclude that in a welfare state where the economy is subject to increasing control federalism cannot thrive Democracy is also the product of liberal thinking. Most of the western states today are endowed with welfare content, but they have seldom abjured the path of democracy. Some tension has no doubt been generated, but that has largely been removed through development of varied layers of social co-operation A similar tendency is also noticeable in contemporary federations which are showing growing capacity for adjustment to the new conditions. Welfare projects are being increasingly executed through cooperative endeavours of the national and State governments both in older federations like the United States and Australia, and new federation like India. Much of the tension between the national and state governments generated by the introduction of the welfare objectives in the governmental programmes is sought to be removed through increasing use of the instruments of cooperation in both legislative and administrative fields [16] Reorientation of federalism is primarily based upon co-operation between two sets of authority in the task of attaining national objectives Increasing discussions between the centre and the units would provide the basis as in India[17] for agreement on broad policies and programmes The units cannot claim absolute autonomy within their jurisdictions, because in the closely inte-

[15] *Federalism and Economic Growth in Underdeveloped Countries*, p 55

[16] On cooperative devices in different federations, see M Venkatrangaiya, *Competitive and Cooperative Trends in Federalism*, Chapter III

[17] India's planning technique involves detailed discussions of the Planning Commission with the central and state government with a view to producing an agreed plan The authority which finally approves the plan is the National Development Council composed of the Prime Minister, the Chief Ministers of the States and the members of Planning Commission This is followed by various conferences between the central and state officials in regard to the execution of the plan. (For an elaborate discussion, see S. R. Sen, 'Planning Machinery in India', in Vol VII, No 3, (July-September, 1961) of *The Indian Journal of Public Administration*)

grated contemporary societies the central and state spheres defy exact demarcation, and often they overlap.

Federalism today is involved in what may be called a beguiling semantic confusion. While the traditionalists stick to the rigid criteria of federalism collected from the American Constitution of 1787, a profound change seems to have taken place in the technical and economic factors of society and in the ideas of men about government and institutions All these developments have radically altered the environment of federation which calls for a restatement of its essentials. The semantic confusion to which federalism has unfortunately fallen prey, can be ascribed to the fact that while its environment has greatly altered, its formal theory has remained almost static. The inevitable result is that the inflexible theory of federalism fails to come close to living realities. The qualification of federation by such phrase as 'quasi' hardly conveys any precise meaning. As one writer puts it, " . . in the expression 'quasi-federation' the word 'quasi' hints at a deviation from the federal principle without indicating what kind of special position a particular quasi-federation occupies between a unitary state and a federation proper".[18]

The need today is to re-define federalism in the light of the universal trends and tendencies which are clearly discernible in all federations, old and new. Some modification of the traditional approach is no doubt noticeable.[19] But we believe that this is hardly adequate. What is needed today is reweaving of the theory of federalism which will provide a new angle quite in conformity with its practice and working. As Livingstone correctly says, 'It is the operation, not the form, that is important; and it is the forces that determine the manner of operation that are more important still'.[20]

The limitation of the traditionalists' approach has been to conceive federation as a closed system with the units maintaining their insularity within their constitutionally delimited spheres

[18] C. H. Alexandrowicz, *Constitutional Developments in India*, pp. 158 59

[19] See *A. H Birch's* modification of Wheare's definition of federation in *Federalism, Finance and Social Legislation in Canada, Australia and the United States*, p. 306

[20] *Federalism and Constitutional Change*, p. 4. Wheare also says that 'what determines the issue is the working of the system' (*op cit*, p 33) But how can he then regard the United States, Switzerland and Australia as examples of countries with federal constitutions and federal governments?

Hence their emphasis has been on the completely coordinated and independent status of the centre and the participating units. What strikes even a cursory observer of federations today is that the centre and the units have been compelled by circumstances to move out of their areas, and the States have come to acquiesce in the predominance of the Centre. As problems constantly transcend the boundaries of the States, so their governmental institutions have naturally striven to keep pace with the logic of circumstances. Since this phenomenon assumes a universal tendency in all the federations today, what is needed is not to bemoan the dessication or corruption of an illusory federal principle, but to adapt theory to changing situations. The crucial question to consider is: Does the Constitution or some law made by the Centre divide authority between the Centre and the States?[21] The second crucial question, which is closely connected with the first, is: "Are the National and State Governments related to one another as Principal and Delegate?"[22] If under a system of government both the central and the state authorities derive their status and powers from the Constitution and not from some central law, and can ordinarily enjoy substantial autonomy within their respective jurisdictions set by the Constitution, then there is no valid ground to deny federal character to that system of government.

Our approach spotlights the minimum requirements of the federal form of government. This is desirable, firstly, because it helps in finding a thread of unity which binds all the federations such as the old federation like the United States of America and the new federations like India, and thus obviates the need for qualifying some federation by such term as 'quasi' which has no precise connotation. Secondly, our approach reveals an empirical attitude based upon a close observation of the contemporary trends and tendencies discernible in the federations, old and new. The traditional mould of federalism has broken down in every country with a federal constitution. Thus, if the federal theory has to come close to living realities, it must tread a new path free from traditional rigidities.

[21] B. R. Ambedkar, *C.A.D.*, Vol. II, p. 976.
[22] Kennedy *The Constitution of Canada*, p. 412.

CHAPTER II

FORCES THAT SHAPED INDIAN FEDERALISM

Institutions and instrumentalities portray and articulate the mutually competing forces operating in the society. A mature understanding of the constitutional structure of federalism calls for the exploration of the myriad social forces which shape its form and content. Federal society is essentially pluralistic in nature, and federal institutions express the federal nature of a society. Institutions are more or less federal according as the political society, on which the institutions are grafted, is integrated or differentiated As William S. Livingston observes, "The varying degrees of federalism are produced by societies in which the patterns of diversity vary and in which the demands for the protection and articulation of diversities have been urged with more or less strength".[1] Certain forces in a federal society have in themselves the image of marked social diversities. These centrifugal forces are engaged at the time of constitution-making in a contest with the centripetal forces for their enshrinement in the constitutional fabric of the society. The balance of power in the final form of the constitution between the centre and the constituent units is in a large measure determined by the relative strength of the centripetal and centrifugal forces working in the society. With this sociological background, we can analyse the operative forces which determined the nature of Indian federalism.

The Constitution of India is federal in form B. R. Ambedkar, while introducing the draft Constitution, said: "Federalism means the establishment of a Dual Polity. The Draft Constitution is *Federal Constitution inasmuch as it establishes what may be called* a Dual Polity. This Dual Polity under the proposed Constitution will consist of the Union at the Centre and the States at the periphery, each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution".[2] But the Indian federation, it has been frequently observed, has a

[1] 'A Note on the Nature of Federalism' in *Political Science Quarterly*, Vol. 67 (1952). See also Livingston, *Federalism and Constitutional Change*, p. 6

[2] *C.A.D.*, Vol VII, p. 33

pronounced centralised bias. The conflicting social forces in India, engaged in competition for ascendancy, exerted divergent pulls and pressures on the drafting of the Constitution, and shaped the form and pattern of Indian federalism in varying degrees

Taking India as a whole, her society is essentially federal in nature, and its heterogeneous qualities are clearly manifest. Linguistic and cultural particularisms, expressed broadly through historically integrated geographical units, constitute the most powerful centrifugal forces in India which have always acted as a check on any movement towards unitarianism The flowering of regional literatures through remarkable development of regional languages, reflecting the characteristic spirit of regional cultures, created a consciousness of regionalism This regional consciousness, in its devotion to the greater cause of freedom, was no doubt considerably subdued during the days of India's struggle for freedom But off and on it found expression through an articulate demand for regional autonomy as a necessary means of preserving regional particularisms This demand was one of the important features of programme of India's national movement It has been rightly said that the movement "which achieved India's independence was built up by harnessing the forces of regionalism"[3] In view of the marked regional diversities broadly based upon linguistic and cultural distinctiveness, the founding fathers of India's Constitution had no choice but to frame a federal Constitution

The regional entities derive their strength from "the strength of age, of roots deep in the triumphs and humiliations of a venerable history"[4] They are historical entities, and inspite of several attempts in the past in the periods of empire building to build up a strong unitary system, they have not been lost in the maze of history. Indian geography and history have always stood out against any permanent merger of the regional units Big rivers and deep forests, expanding deserts and varying soil conditions have segmented India into many territorial layers, and they have exercised a great and continuing influence upon the

[3] *Report of the States Reorganisation Commission*, p. 39

[4] Selig S Harrison, *India, The Most Dangerous Decades*, p 12. Chapter II of this book contains a brilliant historical background of the contemporary regional entities. See also Nehru, *The Discovery of India*, pp. 48-49

meandering course of Indian history.[5] As one authority puts it, "The course of Indian history, like that of other countries in the world, is in large measure determined by its geography. Each of the territorial units into which the hand of nature divides the country has a distinct story of its own The intersection of the land by deep rivers and winding chains flanked by sandy deserts or impenetrable forests, fostered a spirit of isolation and cleft the country asunder into small political and even social units, whose divergences were accentuated by the infinite variety of local conditions".[6]

The regional entities enjoyed continuous political independence except at certain periods, such as the age of the Maurya, the Gupta and the Mughal Emperors, when a great Emperor swooped down upon the neighbouring regions and brought these under his suzerainty. But, with the passing away of these powerful emperors, the regions again asserted their independent status. As the regions are historical units, they have abiding historical memories of their own sufferings and achievements. These memories are treasured up in regional literatures, fables and myths The memories of glories of the great Palas warm up the blood of the Bengalees, the Marathas look back with pride to the days of Sivaji and of the Peshwas The Sikhs have been integrated into a distinct unit, not only by their religion, but also by the memories of their long struggle and suffering in the days of the Mughals.

The regional diversities having abiding roots in history reveal the essentially federal nature of Indian society, and these constituted the most powerful centrifugal pressure at the time of Constitution-making.

Apart from marked cultural varieties, the other factor, which weighed heavily with the Constitution-makers in their preference for a federal constitutional structure, is the size of the Indian Union. From the snowy heights of the north down to the coasts of the Southern Peninsula India is a big country with an area of 12,59,797 square miles Unitarianism in a country of this size is administratively inexpedient; a big country characterised by wide local variations would not admit of exact administrative

[5] For a good discussion of the influence of geography upon the course of Indian history, see K. M Panikkar, *Geographical Factors in Indian History*, Chapters II and VI

[6] H. C. Raychoudhury in *Advanced History of India*, Part I, p 5

standardization imposed from a single Centre. Any experiment with unitarianism in a country of such size and variety would have ended in a cruel failure. As Justice P. N. Sapru said in his Agra University Lectures in 1953: "Our founding fathers wisely did not establish for this country a completely unitary government in which there was no distribution of sovereignty among the various units composing it. Any such attempt would have completely broken down as India is too vast a country to be governed as a completely unitary state".[7]

Another important factor which exerted decisive influence on Free India's choice of federal Constitution was that the foundation of federalism had already been laid by the 1935 Act. And the Constitution of India in its federal aspect carries profound influence of that Act. It was not merely a case of historical continuity. "Nor was it simply a matter of taking what lay to hand, the problems which the 1935 Constitution was designed to solve had not disappeared with the transfer of power".[8] The integration of the Princely States in the Indian Union could be accomplished without any major pain, largely because Free India started with a federal Constitution which, at least initially, when the situation was explosive, could accommodate regional prejudices and susceptibilities and the selfish interests of the Princes.[9] Thus the former Princely States were treated as Part B States of the first schedule of the Constitution.

Only the provincial part of the 1935 Act came into operation. It set in motion two forces, both of which created a climate of federalism. First, the provision for provincial autonomy in the 1935 Act was the culmination of the process of devolution of authority which had started under the Act of 1919. The Act of 1935 constituted the Provinces as the units of a federation invested with original powers derived from the Constitution.[10] With the

[7] Quoted in William O Douglas, *We the Judges*, p. 38

[8] W H Morris Jones, *Parliament in India*, p. 17

[9] That the Princes would not agree in the beginning to a unitary system, was understood by the astute diplomat Sardar Patel who, therefore, made an "appeal to all the princely rulers of Indian States . . . *to* accede to the Union in three subjects, foreign relations, defence, and communications".—N D Palmer, *The Indian Political System*, p 89

[10] For an adequate discussion of the nature and scope of Provincial Autonomy in the 1935 Act, see P. N. Masaldan, *Evolution of Provincial Autonomy in India* (1858 to 1950), Chap 3

operation of the provincial part of the Act a popular consciousness of provincial authority came gradually to be developed, and this inevitably worked at the time of Constitution-making as an important centrifugal force Secondly, the operation of the 1935 Act and to a lesser extent, the 1919 Act, profoundly influenced Indian politics by throwing out a large number of provincial leaders As Morris-Jones observes, "The Acts of 1919 and 1935 . . . effected an important change in Indian political life· they introduced on to the stage the provincial politicians"[11] The Congress under the 1935 Act formed ministries in eight Provinces, and in other Provinces it constituted a sizeable number in the legislatures. Possession of power, although for a brief period, developed in the persons concerned a sense of authority which, they knew, would come to an end if India went unitary. These provincial politicians, who were eager to maintain their authority, formed a substancial section of the Constituent Assembly members, and were not expected to favour any unitary Constitution.

We have referred to the centrifugal or separatist forces in Indian society which greatly influenced the nature of Indian Constitution. But federalism "is . . . possible only when the sense of belonging to the major group balances, in the public mind, with the sense of membership of the various minor groups . . .".[12] This 'sense of belonging to the major group' grows and develops through awareness of a common destiny and possession of a minimum basis of common civilization. This sense also develops through long-term effects of administrative and economic factors. We have already seen that save in times of empire-building the forces of separatism and diversity invariably acted as the propelling forces of Indian history. During the British period we notice a steady process of centralisation in administration and legislation with such relaxation of Central control (such as financial decentralisation in the late 19th century) as might appear unavoidable from time to time. This system served to mitigate the evils of local separatism, and to bring all the different regions within the focus of one common administration. Two further developments, which strengthened this unifying force, were the introduction of English education and the setting up of a modern system of

[11] *Op. cit*, p 17

[12] J. Rivero, 'Introduction to a Study of the Development of Federal Societies' in *International Social Science Bulletin*, Vol. IV, Spring, 1952.

transport and communication The introduction of English education created a class of educated elites in every corner of India who could communicate each other's ideas and emotions through the instrumentality of one common medium, and could eventually develop a sense of common belonging amidst regional diversities The coming of the railways was a remarkably important event in Indian history. It dealt a death-knell to local separatism and linked up the different regions of India It helped in the development of national markets, stimulated the growth of large scale industries, and promoted mobility between regions All these developments laid a firm basis of national unity As Nehru observes, "The coming of the British to India synchronized with the developments in transport, communications and industry, and so it was that British rule succeeded at last in establishing political unity" [13]

Political or economic unity has a shaky foundation unless it is accompanied by a consciousness of national unity. This consciousness is known as nationalism or what Toynbee would call, 'the will to be a nation' Nationalism is, as Hayes writes, "akin to primitive tribalism in that it directs the supreme loyalty of its adherents to a community of language, customs and historic traditions" [14] But Indian nationalism seldom took this form. Its appeal was only to a lesser extent to the past; by and large, its appeal was to the present and the future While a common subjection to the oppressive rule of Britain brought home to every Indian an awareness of a common peril and a common destiny, the slow, imperceptible contacts among men of different regions in the political and non-political spheres laid a minimum basis of a common political life As J Rivero aptly puts, "The most favourable occasion for the realization of the common interests of various groups is provided by a threat to all from a common enemy".[15] Britain was this common enemy, and the revolt against British rule created a wide-spread national upsurge which smoothed to a great extent the regional differences This national movement, in addition, threw out in the process of its maturation certain

[13] *The Unity of India*, p 13

[14] "Nationalism", *Encyclopaedia of the Social Sciences*, XI, p. 241

[15] *Op cit*, p 41. The impulse to unite in America and Canada was also provided by the threat from a common enemy See Bryce, *The American Commonwealth*, Vol 1, p. 19, and Dawson, *The Government of Canada*, p. 25

social and political ideals which formed the ideological base of a common political life. Self-determination, democracy and social justice had always been the ruling ideals of the national movement, specially in its 'Gandhi' phase. These ideals constitute the foundation of a common political life The tri-colour flag and the spinning wheel or Charkha served as the symbols of national unity.

The emphasis in the national movement from its very inception was on national unity The national awakening started even before the Indian National Congress originated in 1885 All along the supreme objective was to inspire the people to a national consciousness. As Surendra Nath Banerjea explained the purpose of the Civil Service Agitation which the Indian Association started in 1877 under his leadership, " . . the underlying conception, and the true aim and purpose of the Civil Service Agitation, was the awakening of a spirit of unity and solidarity among the people of India".[16] But until the 1920's the national upsurge was confined to the westernized elites of India, and could not create a popular mood of revolt against an alien government At last Gandhi came and carried the message of national unity and awakening to every door. As Myron Weiner observes, "The nationalist movement did not become nation-wide . . until the 1920's when Gandhi successfully fused religious notions and political objectives and rallied the villagers behind him".[17]

The aforesaid discussion spotlights the centralising forces operating in Indian society in the 19th and 20th centuries. These were the product of long British administration and the long-drawn-out national movement in India. These forces, which profoundly influenced the nature of Indian federalism, were reinforced by other centralising forces in the shape of common aspiration and common concern for the future As Morris-Jones explains it, "But if the framers of the Constitution had enjoyed the experiences of unified rule and common revolt in the past, equally they were sharers in certain common hopes and anxieties for the future; and the unitary character of the Constitution flowed from both sets of factors".[18]

[16] *A Nation in Making*, p. 44 See in this connection Banerjea's tour in North, West and South India, *ibid*, pp. 44-50

[17] *Party Politics in India*, p. 14

[18] *Op. cit.*, p. 7

The 'common anxieties for the future' were the anxieties of any possible repetition of Indian history which is full of fratricidal wars between regions and communities. Any such repetition would destroy the very basis of Indian nationality and the groups forged into a nation during the British period would crumble into tiny units of authority Loyalties to language and religion have deep roots in Indian history, and primitive tribalism might raise its head to strike a deadly blow at the root of Indian nationalism. At the time of Constitution-making the disruptive forces were *already revealing symptoms of revival,*[19] *and this caused a lot of* anxiety which was reflected in the preference of the Constitution-makers for a powerful Centre which would be able to preserve national unity T. T Krishnamachari, while defending the emergency powers of the Centre, observed: ". . . these emergency provisions have got to be tolerated as a necessary evil, and without those provisions it is well nigh possible that all our efforts to frame a constitution may ultimately be jeopardized . . .".[20] Thus the founding fathers of the Indian Constitution were from the very beginning alive to the dangers lurking in the disruptive tendencies inherent in Indian society, and this awareness expressed itself in the constitutional provision for a strong Centre.

It was also felt that the fulfilment of common hopes and aspirations for the future would demand a powerful Centre. India is an underdeveloped country where colossal poverty and rampant social injustice are stark realities. To accelerate the pace of industrialization and to widen the base of social justice are a dire necessity in India. This in turn demands endowing the state with welfare content, for only a welfare state with centralised authority could effectively undertake the task of national recons-

[19] As one member of the Constituent Assembly (Nazirudin Ahmad) said: "There are forces of disintegration and disorder already visible everywhere". *CAD* Vol IX p 116

[20] *CAD*, Vol IX, p 125 In this connection the impact of Partition upon the federal scheme must not be overlooked In fact, the Constituent Assembly was set up originally to frame a federal Constitution for United India on the basis that only Foreign Affairs, Defence, and Communication would constitute the jurisdiction of the Centre. But the Partition of India and the tragic events which accompanied it, brought about a drastic change in the opinion of the Constituent Assembly. Opinion sharply changed from "a minimal to a maximal federation". See K. Santhanam *Union State Relations in India*, pp. 4 5

truction and development. The ideas of welfare state, which found an abiding place in the programme of the national movement, have been integrated in the Constitution of India. The Preamble and the Directive Principles of State Policy express in clear language the ideas of welfare state, and consequently the balance of power between the Centre and the units tilted in favour of the former. It is not possible to carry out a welfare programme unless the Centre has adequate control over the economic and fiscal fields. Thus, when the Constitution-makers accepted the basic ideas of welfare state, they had no choice but to endow the Centre with adequate powers to implement those ideas.

It is the historical background of the constituent units of a federation that largely determines their share of authority in the Constitution. If the units had previously been fully self-governing units, then they would not be willing to surrender a major slice of their powers to the newly formed federal government. Inevitably, the constitutional balance of power in this case would swing in favour of the units Contrarily, the units, which had previously been by and large subordinate agencies, would not resent being given a relatively small amount of authority. In the United States the thirteen liberated colonies which formed a federal union in 1787, were in possession at that time of almost unlimited sovereign powers,[21] and naturally they were not expected to like the idea of bestowing a large amount of powers upon the new federal government. Thus the American federation started with a weak Centre and powerful units. On the other hand, in Canada the component units had "a common if not a uniform experience as subordinate governments under the British Crown",[22] and hence, they knew that the proposed federation with a strong Centre would not adversely affect their existing status The constituent units of the Indian federation, like their Canadian counterparts, were not in enjoyment of sovereign powers. Some devolution of authority, which started in 1919, had no doubt widened into provincial autonomy under the Act of 1935, but that was hedged with numerous reservations and restrictions. The Provinces of India were essentially subordinate governments and never enjoyed the status of independent self-governing authorities. As K. M. Munshi, one of the members of the Drafting Committee of the Constituent Assembly of India, wrote, "The

[21] Bryce, *op. cit*, pp. 19-21 [22] Dawson, *op. cit.*, p. 4

Units in India were not sovereign States like the American States in the eighteenth century coming together to found a federation".[23] The provision of a powerful Centre in the scheme of distribution of powers between the Union and the States in the Constitution of India did not make the position of the Provinces worse, as the scheme did not substantially differ from that of the 1935 Act under which the Provinces functioned. This historical background explains why the provinces did not resent much being treated in the Constitution as somewhat weak authorities.

The architects of a new federation have in their frame of reference the valuable experience of working of the old federations. This historical experience guides the foot-steps of the Constitution-makers, and widens and deepens their knowledge. In its light they can find out the sources of weaknesses of the old federations. The Constitution-makers of Canada, for instance, profited from the experience of the United States in providing for a strong centre. They discovered the cause of the American civil war in the emphasis in the Constitution on States' rights and powers. As Macdonald argued at the Quebec Conference, "In framing the constitution, care should be taken to avoid the mistakes and weaknesses of the United States' system, the primary error of which was the reservation to the different states of all powers not delegated to the General Government. We must reverse this process by establishing a strong Central Government, to which shall belong all powers not specially confered on the provinces".[24] If, to prevent the recurrence of the American catastrophe on Canadian soil, the Canadian Constitution provided for a strong centre, then the fathers of the Indian Constitution did wisely frame a federal structure with a strong Centre for a country where regional loyalties might take a dangerous shape and disrupt the Union. The choice of "Union of States" and not "Federation of States" in Article 1 of the Constitution was deliberately made to emphasise the centralised bias of an "indestructible union", *and that was done clearly to avoid* the recurrence of the American Civil War on Indian soil.[25]

The operation of the older federations has revealed a great departure from their original design. That has been the

[23] *Indian Law Review*, 1950, Vol. IV. [24] Dawson, *op. cit.*, p. 34

[25] Ambedkar made a pointed reference to American experience. See *CAD.*, Vol. VII, p. 43

consequence of the remarkable changes which have taken place, since the American Constitution came into existence in 1787, in the technical and economic factors, and in the political and social environment. All these developments have altered the background of federalism. The logic of this change has revealed itself in a marked centralising tendency in all federations. As William O. Douglas says, "In America, the trend has been toward the development of a strong and powerful national government".[26] In Switzerland and Australia also a similar tendency is noticeable. The "political, economic and social factors", and "the factor of public finance" have promoted centralization in Switzerland.[27] The centralising tendency in Australia has been brilliantly expressed by Ross Anderson: "The federal child has grown to lusty manhood, while the parent states have gone into a decline, with a marked deterioration in many of their faculties".[28] This universal tendency of centralization obtaining in all recognised federations has profoundly influenced the traditional concept of federalism. Hence new federal Constitutions cannot be cast in the traditional mould which has largely broken down under the pressure of new technical, economic, political and social factors.

The Constitution-makers of India were much influenced by this new development in the older federations. Centralization is a compulsion as revealed through world experience, and the Constitution of India has followed it. Alladi Krishnaswami Ayyar, while defending the powers of the Centre, observed: "the whole concept of federalism in the modern world is undergoing a transformation. As a result of the impact of social and economic forces, rapid means of communication and the necessary close relation between the different units in matters of trade and industry, federal ideas themselves are undergoing transformation in the modern world".[29] Thus the influence of centralisation, which is a universal phenomenon today, is writ large on the face of the Constitution of India.

While Indian Society is highly heterogeneous, Indian political system is remarkably homogeneous characterised by a near-

[26] *We the Judges*, p. 42. See also Carl Brent Swisher, *The Growth of Constitutional Power in the United States*, p. 44

[27] W. E. Rappard, *The Government of Switzerland*, pp. 112-19

[28] Else—Mitchell (ed.), *Essays on the Australian Constitution*, p. 130

[29] *C.A.D.*, Vol. II, pp. 838-39

monopoly position enjoyed by the Congress Party. This political homogeneity offsets in a large measure the pulls and pressures of local diversities, and acts as a powerful centripetal force in India. At the time of Constitution making this centralising force was more powerful and manifest, as organised opposition was then *almost non-existent The constellation of circumstances was there* for the formation of a 'contractual' federation. The representatives from both the former Provinces and the Princely states were present at *the historic Constituent Assembly; the ground was* ready for them to enter into an agreement. But the existence of a party which possessed almost complete control over the political situation did not allow the establishment of a 'contractual' federation, and ultimately led to the victory of the centripetal forces. As C H Adexandrowicz wrote, "owing to a mono-party reality tendencies of centralisation prevailed over those of decentralisation".[30]

We have examined *in* some detail the multiple forces and influences which shaped the nature of Indian federalism. We have also seen how the centralising forces had won over the decen*tralising influences, and this victory introduced a marked* centralised bias in Indian federal structure. In the formation of a federation the contributing forces, as J Rivero[31] tells us, are partly *rational and objective, and partly emotional and subjective. While* the former are the centripetal forces, the latter are the centrifugal forces It is the ceaseless conflict between the two that determines the nature and working of a federal system. While the emotional and subjective forces have an immediate appeal to the people, the rational and objective factors have no immediate appeal as they are perceived only on an intelligent evaluation of facts and interests In India, as we shall see in our discussion of the working of the federal system, the forces of unification are pitted against the forces of separatism. While the former are continuous and always active, the latter are generally dormant. But at times they are active indeed, and then they would, like a sleeping volcano suddenly get awake, tend to burst asunder India's national unity and introduce serious strains and stresses in her federal system.

[30] "Is India a Federation?" In *International and Comparative Law Quarterly*, Vol 3, 1954

[31] *Op. cit*, pp. 41-42

CHAPTER III

LEGISLATIVE RELATIONS

The essence of federalism lies in constitutional division of legislative powers. No universally accepted plan of dividing powers is, however, discernible in all federations. In the United States the Constitution allocates powers between the National government and the State governments by provision of five classes.[1] The powers of the National government are enumerated in Article 1, Section 8. All residuary powers are vested in the States. Amendment X explicitly says: "The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the states respectively, or to the people". The prohibitions imposed on the National government are stated in Article 1, Section 9 and first ten amendments, and the restrictions imposed on the State governments are enumerated in Article 1, Section 10 Apart from the above four classes of power, Amendment XVIII, which was subsequnetly repealed by Amendment XXI, provided for a concurrent field of legislation. Through judicial interpretation, however, a field of concurrent legislation has developed in the United States. The powers, which have not been exclusively granted to the National government, constitute the concurrent field of legislation. On some matters such as bankruptcy, weights and measures, harbour regulations, etc. both Congress and the State legislatures can legislate, but State legislation "shall take effect only in the absence of Federal legislation".[2]

In Australia the Constitution broadly follows the American scheme of division of powers. The powers of the Commonwealth are enumerated in Sections 51 and 52 and some other sections of the Constitution, while Sections 106 and 107 vest the residuary powers in the States. The powers specified in Section 51 are not, with a few exceptions, exclusive, because under Section 107 every power of a State "shall, unless it is by this Constitution exclu-

[1] Bryce, *The American Commonwealth*, Vol. 1, pp. 313-18. See also A. L. Goodhart's paper in *Studies in Federal Planning*.

[2] Bryce, *op. cit.*, p. 316

Governor-General could in his discretion assign either to the Centre or to the Provinces legislative powers regarding subjects not mentioned on any list, under the new constitution subjects not on the lists, including taxes, fall within the exclusive competence of the Union Legislature".[1] The foundation of federalism had already been laid in India by the 1935 Act, and the problems confronting Indian federation had not substantially changed since then. An elaborate federal scheme was there, and hence it was quite natural and also tempting for the makers of the Indian Constitution to accept the essentials of the 1935 Act in their plan of allocation of powers.

As in the 1935 Act, so in the Constitution of India there is a combination of the Canadian and the Australian methods of distribution of powers In other words, the Indian Constitution follows the Canadian method mellowed by the Australian constitutional insight. The three-list system in the Constitution of India resembles the general pattern of distribution of legistrative powers in Canada Besides, Article 248 of the Constitution confides the residuary power to the Union Parliament, as in Canada But while the concurrent list in the Canadian Constitution is exceedingly narrow and comprises only three subjects, the Indian *Constitution in close imitation of the Australian scheme* provides a wide concurrent field of legislation with a view to "assuaging the rigour of rigidity and legalism".[2] At the same time, the Constitution extends the exclusive legislative competence of the Union Parliament to 97 classes of subjects, thus greatly improving upon the Australian scheme In this way, as Dr. B. R. Ambedkar *observed, the Constitution introduced the greatest possible elasti*city in its federalism.[3]

One important member of the Drafting Committee, Alladi Krishnaswami Ayyar, in a separate note suggested a somewhat different plan of the distribution of powers His scheme contained two lists, the state and concurrent, with central supremacy in the *latter in case of a conflict, and left residuary power to the Centre.* The point of his plan was that "inasmuch as it is agreed that the residuary power is to vest in the Centre (Union Parliament), the various enumerated items in the Union list are merely illustrative of the general residuary power vested in Centre. The proper

[1] *The Republic of India*, pp. 77 78 [2] *C.A.D.*, Vol VII, p. 35
[3] *C.A.D., Vol VII, p 35*

plan, therefore, is to define the powers of the State or Provincial Units in the first instance, then deal with the concurrent power and lastly deal with the power of the Centre or the Union Parliament while at the same time making out a comprehensive list of the powers vested in the Centre by way of illustration to the general power"[10] This scheme, although not different in principle from the plan embodied in the final Constitution, has the merit of simplicity, and appears to be more logical

The other members of the Drafting Committee, while not doubting the merit of Alladi's scheme, did not, however, accept it, and followed the plan embodied in Section 100 of the Government of India Act, 1935, on grounds of expediency. The 1935 Act had come into operation, and there was popular acquaintance with its provisions. Moreover, the principles of interpretation which had emerged through judicial decisions on the scope of different items in the legislative lists of the 1935 Act could provide ample guidance in interpreting the scope of the legislative items in the new Constitution All these considerations weighed heavily with the members of the Drafting Committee in finally accepting the scheme of the 1935 Act in preference to Alladi's scheme.

The Constitution of India has provided a detailed and comprehensive enumeration of the classes of subjects on which the Union and the State legislatures are competent to legislate. The Union list comprises 97 items on which the Union Parliament is empowered to legislate, whereas in the 1935 Act it included only 59 items. This tremendous increase in the legislative powers of the Union could be ascribed to several factors. First, some new developments such as Atomic Energy and U.N.O were beyond the frame of reference of the makers of the 1935 Act Their inclusion in the Union list in the new Constitution has enhanced the scope of Union powers. Secondly, the fragmentation of the subjects to the minute details in the Constitution of India is an important cause of increase in the Union powers. Items 10, 11, 12, 13, 14 in List I of the Seventh Schedule, for instance, are not, strictly speaking, different classes of subjects. They are only different emanations from one source, 'foreign affairs' power, and hence they could be conveniently lumped together under 'foreign affairs' item. Thirdly, the Constitution of India, which is designed to serve the needs of rapid economic development, has naturally augmented the scope

[10] *Draft Constitution of India*, p 211

of Union authority in the economic sphere. For instance, banks, insurance and other financial institutions over which central control was only partial under the 1935 Act,[11] have been brought under the most comprehensive control of the Union Parliament in the new Constitution Similarly, highways and inter-state rivers and river valleys which did not find any place in the federal list under the 1935 Act are among the subjects on which the Union Parliament will have exclusive competence to legislate if it so desires

The Union list, which is the longest list, includes defence of India, armed forces, atomic energy and mineral resources necessary for its protection, industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war, Central Bureau of Intelligence and Investigation, preventive detention, foreign affairs, war and peace, foreign jurisdiction, citizenship, extradition, passports and visa, piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air, railways, highways declared by or under law made by Parliament to be national highways, shipping and navigation, lighthouses and ports, airways, posts and telegraphs, union property and revenue therefrom, public debt of the union, currency, coinage and foreign exchange, foreign loans, Reserve Bank of India, trade and commerce with foreign countries, inter-state trade and commerce, incorporation, regulation and winding up of trading corporations including banking, insurance and financial corporation but not including cooperative societies, banking, insurance, bills of exchange, stock exchange, patents, inventions and copyrights, industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest, regulation and development of oil fields and mineral oil resources, regulation of mines and mineral development, regulation of labour, regulation and development of inter-state rivers and river valleys, film censorship, coordination and determination of standards in institutions for higher education or research and scientific and technical institutions, surveys of India, census, audit of the Union and State accounts, constitution and organisation of the Supreme court and High courts, inter State migration, taxes on income other than agricultural income, custom duties, excise duties, corporation tax,

[11] See List I, Items 33 and 38

taxes on the capital value of the assets exclusive of agricultural land, estate duty, etc.

All the modern federations possess a concurrent jurisdiction where both Centre and States are empowered to legislate.[12] The desirability of having a concurrent field of legislation has been universally recognized. As the Joint Committee on Indian Constitutional Reform (1934) observed: "Experience has shown, both in India and elsewhere, that there are certain matters which cannot be allocated exclusively either to a Central or to a Provincial Legislature, and for which, though it is often desirable that provincial legislation should make provision, it is equally necessary that the Central Legislature should also have a legistative jurisdiction, to enable it in some cases to secure uniformity in the main principles of law throughout the country, in others to guide and encourage provincial effort, and in others again to provide remedies for mischiefs arising in the provincial sphere but extending or liable to extend beyond the boundaries of a single Province".[13] The consurrent list which contains 47 items is quite impressive[14] It includes criminal law and procedure, preventive detention for reasons connected with security of a state, marriage and divorce, contracts, bankruptcy and insolvency, trust and trustees, adulteration of foodstuffs and other goods, drugs, economic and social planning, social security and social insurance and unemployment, welfare of labour, legal, medical and other professions, relief and rehabilitation, shipping and navigation, price control, trade and commerce in and the production, supply and distribution of the products of any industry where Union control is declared by Parliament to be expedient in the public interest, stamp duties, newspapers, books, etc. An examination of the nature of these concurrent subjects would suggest that they can broadly be classified into three categories: subjects relating to the police functions of the state, subjects relating to the welfare functions of the state and subjects relating to the personal rights and privileges of the individuals

[12] See K. C. Wheare, *Federal Government*, pp 73-78

[13] *Report*, para 51, pp. 30-31

[14] As Alladi Krishnaswami Ayyar observed: "The existence of a large list of concurrent subjects is calculated to promote harmony between the Centre and the units, and avoid the necessity of the courts having to resolve the conflict if there is to be only a two-fold division of subjects" *C.A.D.*, *Vol. II*, *p. 838*

Both the Union Parliament and the State legislatures are competent to legislate on any matter enumerated in the concurrent list, and no question of legislative competence would arise. But in case of any inconsistency between any provision of Union law and that of a State law, the latter shall be void to the extent of the repugnancy[15] But repugnancy arises only when both the laws "occupy the same field because, if both these pieces of legislation deal with separate and distinct matters though of cognate and allied character, repugnancy does not arise". Moreover, "repugnancy must exist in fact, and not depend merely on a possibility" The possibility of a law being made by the Centre would not be enough. The existence of such a law would be the essential pre-requisite before any repugnancy could ever arise.[16] Clause 2 of Article 254 allows the State law to prevail notwithstanding its repugnancy to Union law if it has been reserved for the President's consideration and has secured his assent This clause introduces flexibility in the operation of the Article inasmuch as it enables the Centre to review the felt needs of a state on a wider canvas and to validate the repugnancy if it is justified by such review. The proviso to this clause, however, authorises the Parliament to make another law with respect to the same matter to amend or to repeal a repugnant State law which has been validated by the President's assent.

The State list contains 66 classes of subjects on which the State legislature has exclusive authority to legislate. This list has been prepared with an eye on local conditions and problems, and their variety in different States would naturally call for differentiated treatment. It includes public order, police, administration of justice and constitution and organisation of all courts except the Supreme court and the High court, local government, public health and sanitation, intoxicating liquors, relief of the disabled and unemployable, education, communications, agriculture, water, land, forests, regulation of mines and mineral development and industries subject to relevant provisions of List I, trade and commerce within the State subject to the provisions

[15] Article 254 (1)

[16] On the point of repugnancy, see the Supreme Court's Judgment in Ch. *Tika Ramji and others, v. The State of Uttar Pradesh and Others*, S.C.J Vol XIX, 1956, and also in the case of *Deepchand and others v. The State of Uttar Pradesh* and others, S.C.J., Vol. XXII, 1959

of entry 33 of List III, weights and measures, incorporation, regulation and winding up of corporations other than those specified in List I, and universities, public debt of the State, land revenue, taxes on agricultural income, taxes on mineral rights subject to any limitations imposed by Parliament, sales tax, etc.

In spite of meticulous draftsmanship in carefully enumerating the classes of subjects for legislation, it is well-nigh impossible to encompass the whole jurisdiction of all possible legislative activity and to exhaust the legislative field. As the Joint Committee on Indian Constitutional Reform (1934) aptly observed, "It would . . . . be beyond the skill of any draftsman to guarantee that no potential subject of legislation has been overlooked, nor it be assumed that new subjects of legislation, unknown and unsuspected at the present time, may not hereafter arise; and therefore, however carefully the lists are drawn, a residue of subjects must remain, however small it may be . . ."[17] In the Constitution of India, it is true, the scope for residuary power is very limited in view of detailed and comprehensive enumeration of subjects for legislation. But the possibility of the 'residue of legislative power unallocated' is not altogether ruled out, and Article 248 confides such power exclusively to the Union Parliament. This provision is similar to Section 91 of the Canadian Constitution which authorises the Parliament to "make Laws for the Peace, Order, and good government of Canada, in relation to all Matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces. . ."

The makers of the Indian Constitution through demarcation in a comprehensive manner of the spheres of the Union Parliament and the State legislatures sought to avoid all possible conflicts of jurisdiction. But it is humanly impossible to ensure that such conflicts will not arise. As Gwyer, C.J., observed in *Subrahmanyan v. Muttuswami*[18]: "However carefully and precisely lists of legislative subjects are defined, it is practically impossible to ensure that they never overlap; and an absurd situation would result if two inconsistent laws, each of equal validity, could exist side by side within the same territory". In order to avoid such

[17] *Report*, para 54, p 32

[18] Quoted in V. V. Chitaley and S Appa Rao, *The Constitution of India*, Vol. 3

absurd situation the makers of the Constitution provided for the resolution of conflicts of legislative jurisdiction of the Union and the States In such cases a distinct primacy has been given to the Union Parliament. Thus the power of the State legislatures to legislate on matters in the State list is subject, under clause (3) of Article 246, to the power of the Union Parliament to legislate on matters in the Union and Concurrent lists under clauses (1) and (2) of the said Article

In addition to the legislative powers exclusively allocated to the Union listed above, the Union Parliament enjoys exclusive authority in matters of creating certain additional courts and implementing international agreements. Article 247 states: "Notwithstanding anything in this chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing laws with respect to a matter enumerated in the Union List" This provision in the Constitution of India is analogous to Section 101 of the Canadian Constitution which empowers the Parliament of Canada to establish "any additional courts for the better Administration of the Laws of Canada". Article 247 makes it abundantly clear that the jurisdiction of the proposed additional courts, which the Parliament of India may create, will be exclusively confined to the Union list.

The Parliament of India has comprehensive legislative power for implementing treaties and agreements. Article 253 states: "Notwithstanding anything in the foregoing provisions of this chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body." This provision recognises the treaty power as a specific source of legislative power, and the expression 'notwithstanding anything . . . . chapter' clearly indicates that this power is not confined to Union list only, it may also infringe on the sphere allocated to the States This provision has the obvious ment of avoiding the immense difficulties which the treaty implementation has encountered in all federations[11] In Canada Section 132 of the British North America Act empowers the Parliament and the government of Canada to give effect to a treaty

[11] Bowie and Friedrich, *op cit*, pp 252 53

as part of the British empire relating to a matter covered by Section 91. But in case of a treaty to which Canada is a party as a free, sovreign nation, its implementation will depend upon "the normal distribution of legislative power between the Dominion and the provinces"[20] and hence, shall not infringe on the Provinces' jurisdiction. Thus the three Acts of Canadian Parliament passed in pursuance of previously concluded international labour conventions were held void by the Privy Council on grounds of their tresspass into the field of labour which was reserved for the Provinces. In Australia, although the Parliament under Section 51, sub-section XXIX, has power to legislate on external affairs, the question whether the implementation of treaties may justifiably intrude upon the States' jurisdiction is not clearly decided. But, "two decisions in aviation cases seem to indicate the possibility of treaty-based legislation dealing with certain matters within the legislative power of States".[21] In the United States Article VI of the Constitution states. "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding." The Supreme Court decisions have been in full keeping with the letter of this Article, and hence, in the United States the federal legislations made in execution of treaties may justifiably infringe upon the fields of action reserved for the States.[22]

Mere enumeration of the subjects for legislation is not the sole determinant of the ambit of power and the jurisdiction of the Centre and the States. Power expands or shrinks in various ways through judicial interpretation. In the United States, for instance, the scope of the enumerated powers of the National government has immensely widened through the broad interpretation of the 'necessary and proper' clause of the Constitution by the Supreme Court. This is known as the doctrine of implied powers which finds "its verbal basis in the power granted to Congress to make all laws necessary and proper for carrying into execution those powers which are expressly delegated to it (Art. I, Sec. 8,

[20] Dawson, *op. cit.*, p. 114

[21] Bowie and Friedrich, *op. cit*, p. 253

[22] See Swisher, *The Theory and Practice of American National Government*, pp. 897-98

Cl. 18)".[24] Its consequence has been tremendous expansion of the federal authority which has profoundly altered the original balance of power. The broad interpretation of the federal powers which started under the aegis of Chief Justice Marshall is a continuous phenomenon in the United States. Marshall, while defending the power of the Congress to charter a bank and to control banking under the Congressional power to coin money, made an important observation: "We think the sound construction of the constitution must allow to the national legislature that discretion . which will enable that body to perform the *high duties assigned to it, in the manner most beneficial to the* people".[25] The Supreme Court has attached such a comprehensive *meaning to the 'commerce' power of the Congress that it covers* a wide variety of problems arising out of or having any effect upon inter-State commerce.[26] The Congressional power to legislate on social security measures under the power to tax and spend for the general welfare was upheld by the Supreme Court in its decisions in cases of *Stewart Machine Company* v. *Davis* and *Helvering* v. *Davis*. This tendency of the Supreme Court to enlarge national powers was remarkably manifest in its judgment in the case of the *United States* v. *South-Eastern Underwriters Association*. Here Justice Black, while ruling that insurance is commerce and thus nullifying a 75-year-old precedent, explained the scope of the 'commerce' power: "The power granted Congress is a positive power It is the power to legislate concerning transactions which, reaching across state boundaries, affect the people of more states than one; to govern affairs which the individual states, with their limited territorial jurisdictions, are not fully capable of governing. This federal power to determine the *rules of intercourse across state lines was essential to weld a loose* confederacy into a single, indivisible Nation; its continued existence is equally essential to the welfare of that Nation."

Thus the very comprehensive interpretation which the American Supreme Court has evolved of the federal powers has introduced

[24] A. T. Mason and W. M. Beaney, *American Constitutional Law*, p. 122. The relevant cases on American Constitution have been taken from this book

[25] *Ibid.*, p. 154

[26] Article by Vincent M. Barnett, Jr. in *American Political Science Review*, 1947, pp. 1170-71

a distinct centralising tendency in American federalism. But in India, because of *double* enumeration of the subjects for legislation with minute details, such broad interpretation of the federal powers is not possible Naturally the Supreme Court of India has refused to accept the American doctrine of implied powers. Chief Justice Kania in *Ramkrishna Ramnath* v *Secretary, Municipal Committee, Kamptee* observed: "It is natural enough, when considering the ambit of express power in relation to an unspecified residuary power, to give a broad interpretation to the *former at the expense of the latter* The case, *however, is* different where as in the Constitution Act there are two complementary powers, each expressed in precise and definite terms. There can be no reason in such a case for giving a broader interpretation to one power rather than to the other" [27]

Although the American doctrine of implied powers, which has been used to offer a broad sweep to federal powers at the expense of state powers, has not found favour with the Supreme Court of India, the Courts in India have accepted the responsibility of interpreting the subjects for legislation in a liberal way. This has bestowed upon the legislatures, both federal and state, certain incidental powers. The principle is that power assigned by the Constitution to the legislature on a subject carries with it the power to legislate on incidental matters connected with that subject.[28]

Under the Canadian Constitution, where there is double enumeration of powers as in India, the principle of incidental powers[29] has been accepted in relation to both Dominion and Provincial legislatures. Thus it was held in *Attorney-General for Canada* v. *Attorney-General for British Columbia* that the Dominion Parliament had the competence to provide for matters which, though otherwise within the purview of the Provincial legislatures, were necessarily incidental to effective exercise by the Parliament of its powers expressly enumerated in S. 91 of the British North America Act. Similarly, the Privy Council recognised the incidental powers of the Provincial legislatures necessary for effective exercise of their powers enumerated in Section 92

[27] *A.I.R.* (Vol 37), 1950

[28] See D. Basu, *op. cit.*, p. 210

[29] The relevant cases have been taken from *Rowell Sirois Report*, Dawson, *op. cit*, and D. Basu, *op. cit.*

In Australia the Constitution has expressly assigned incidental powers to the Parliament. Section 51, Clause XXXIX, gives the Parliament the power to legislate with respect to "matters incidental *to the execution of any power vested by this Constitution in* the Parliament". This principle of incidental powers[38] has been employed in Australia to give a broad meaning to the powers of the Commonwealth Parliament enumerated in the Constitution. Thus 'trade and commerce' power in Clause i implies power to directly regulate the conditions of employment of waterside workers and seamen engaged in inter-State and overseas trade (*Huddart Parker Ltd.* v. *The Commonwealth* (1931)); similarly the power to prevent and settle inter-State industrial disputes by conciliation and arbitration in Clause XXXV implies the power of the Parliament to legislate for penalising strikes (*Stemp* v. *Australian Glass Manufacturers* (1917)).

Under the Constitution of India, as we have already observed, the principle of incidental powers has been accepted. As the Supreme Court observed: ". . . when a legislature is given plenary power to legislate on a particular subject there must also be an implied power to make laws incidental to the exercise of such power. It is a fundamental principle of constitutional law that everything necessary to the exercise of a power is included in the grant of the power".[41] This principle is applicable in case of both Union Parliament and State legislatures. By way of illustrating such incidental powers it may be pointed out that the power to legislate with respect to 'collection of rents' (Entry 18 of List II) implies the power to legislate with respect to remission of rents; similarly, the power with respect to 'administration of justice and constitution of courts' (Entry 3 of List II of the Constitution) includes the power to clothe the courts so constituted, with general jurisdiction and power to hear causes[39]

Overlapping of jurisdictions of the Union and State legislatures cannot altogether be ruled out, even when detailed and comprehensive enumeration of subjects of legislation is provided in the Constitution. The general principle laid down in Article 246 is that in case of a conflict on a particular matter, the Union

[38] The relevant cases have been taken from Nicholas, *The Australian Constitution* and Ross Anderson in *Essays on the Australian Constitution*

[41] *Edward Mills Co.* v. *State of Ajmer*, 1955, S.C.J. Vol. XVIII

[39] D Basu, *op. cit*, p. 212

Parliament enjoys supremacy. But this general principle "may be invoked only in the case of 'irreconcilable conflict'. And here the doctrine of 'pith and substance' comes into play".[33] It means that an act falling substantially within the jurisdiction of a legislature does not become void even if it incidentally infringes upon a subject falling within the jurisdiction of another legislature. This principle, which is generally recognised under the Canadian Constitution in the task of interpretng the assignment of power under Sections 91 and 92 of the British North America Act, has been instrumental in determining the jurisdiction of the Dominion and Provincial legislatures.[34]

The rule of 'pith and substance' has been accepted by India's Supreme Court. The Court made the following observation in a recent case: "Where in an organic instrument such enumerated powers of legislation exist and there is a conflict between rival lists, it is necessary to examine the impugned legislation in its pith and substance, and if that pith and substance falls substantially within an Entry or Entries conferring legislative power, the legislation is valid, a slight transgression upon a rival list, notwithstanding".[35] The same view has been expressed in a number of cases. For instance, in the *State of Bombay* v. *F. N. Balsara*[36] it was contended that the Bombay Prohibition Act, 1949, was not void as it substantially fell within List II, although it encroached upon the federal jurisdiction only incidentally.

Thus legislative autonomy of both Union and States is not inconsistent with incidental encroachment upon each other's field. Moreover, the Supreme Court's adoption of the principle of incidental powers has led to enlargement of powers at both leve's—Union and State, although its widening effect in the absence of any doctrine of implied powers has not been spectacular.

Judicial interpretation has influenced the distribution of powers differently in different federations. While in the United States and Australia the balance has tilted in favour of the Centre, in Canada the scale has favoured the units. National supremacy in

[33] D Basu, *op. cit.*, p. 272

[34] Dawson, *op. cit*, pp. 102-103. See also D K. Sen, *op. cit*, pp 176-77

[35] *The State of Rajasthan* v. *Shri G. Chazla and Dr. Pohumal* (1958), S C J., Vol XXII, 1959

[36] A I R. (Vol. 38), 1951. See D. Basu's excellent note on this case, *Cases on the Constitution of India (1950-51)*, pp. 323-24

the United States was first upheld by Marshall[37] when he developed the doctrine of implied powers, and since then the major trend in judicial decisions has been favouring the Centre. In Australia since the High Court enunciated the basic principle of interpreting the Commonwealth's legislative power in the *Engineers' Case* the judicial decisions have been more and more augmenting the authority of the federal government which received a very comprehensive sweep in the Court's decision in the *Uniform Tax Case*.[38] In Canada the trend of judicial interpretation has been favourable to provincial power.[39] The narrow interpretation of the residual power of the Dominion contained in Section 91, combined with a broad meaning attached to the general expression "property and civil rights in the provinces" embodied in Section 92, has introduced a decentralizing tendency in Canadian federalism. As F. R Scott aptly observed, "In the United States, a looser federalism was unified by the judgments of a Marshall, while in Canada a stronger union was decentralized by a Watson and a Haldene".[40]

In India no marked trend of judicial interpretation is, however, discernible. Of course, there is very little opportunity under the Constitution of India for the judiciary to decisively influence the distribution of powers The detailed division of powers with precise enumeration of the subjects for legislation has tended to minimise the scope for judicial interpretation. Besides, the political homogeneity enforced by a single party rule in both Centre and most of the States has as a matter of fact largely removed the possibility of Union-State conflicts being decided by the judiciary. Conflicts no doubt arise, but are mostly decided at political level. But sometimes the consciousness of State rights becomes so powerful that it transcends the party loyalty, and the Union-State conflict is pushed into the court room The recent case of *The State of West Bengal* v. *The Union of India* illustrates this fact. The State of West Bengal in this suit challenged the competence of the Parliament to make a law authorising the Union Government to acquire land and rights in or over land vested in the State which was sought to be acquired by the Union under the Coal Bearing Areas

[37] *Report of the U S Commission on Intergovernmental Relations*, pp 23-24

[38] "The States and Relations with the Commonwealth" by Ross Anderson in R. Else Mitchell, *Essays on the Australian Constitution*, pp. 97-108

[39] *Rowell—Sirois Report*, Bk. I, Ch. IX, p 248

[40] *The Canadian Bar Review*, Vol. XXIX, 1951

(Acquisition and Development) Act. The Court, in recognising such authority of the Parliament, was guided by three considerations: first, the distribution of powers under the Constitution "does not support the theory of full sovereignty in the States so as to render it immune from the exercise of legislative power of the Union Parliament particularly in relation to acquisition of property *of the States*"; secondly, even where as in the United States "the states are regarded *qua* the Union as sovereign" the power of the Union to legislate "in respect of property situated in the States . . . remains unrestricted", and thirdly, power to legislate "for regulation and development of mines and minerals under the control of the Union, would by necessary implication include the power to acquire mines and minerals, and therefore power to legislate for acquisition of property vested in the States cannot be denied to the Parliament"[41] The third argument is decisive and quite relevant. We agree that Parliament is competent to legislate authorising the Union Government to acquire property vested in the States necessary for exercise of its constitutionally assigned power; otherwise, the exercise of that power would become ineffective. But if the Supreme Court in future is guided by the underlying spirit of the judgment in the present case, then that might profoundly influence the balance of power in favour of the Union, for the spirit is distinctly centripetal

Federalism in its nature suffers from the defect of rigidity The powers of both sets of authority are fixed by the Constitution. Because of this, inter-level transfer of authority, which may be occasionally needed for accomplishing the task of a modern government, is not possible in a federal system except through judicial review or constitutional amendment. Judicial interpretation involves a lot of uncertainties, while the way of constitutional amendment will be resented by the States inasmuch as it involves permanent curtailment of their authority. These difficulties would suggest the incorporation of some provisions in the Constitution with a view to making temporary transfer of power from

[41] S C. (original jurisdiction), Suit No 1 of 1961, Judgment delivered on December 21, 1962. *See also the dissenting judgment by Subba Rao, J* in which the learned Judge observed that the Court should have prevented the Union from overstepping its boundary as the Constitution did not expressly authorise the Union to acquire land and rights in or over land vested in the States.

States to Centre possible. Such constitutional innovations introduce the much-needed flexibility in the working of federalism. One such useful innovation was introduced by Section 51, sub-Section XXXVII, of the Commonwealth of Australia Constitution Act, designed to make the otherwise rigid system of federalism flexible in its operation

The Constitution of India goes further than the Australian plan in exploring new ways for mellowing the rigour of the rigid mould of federalism. As Ambedkar observed, "It is not enough to say that the *Draft Constitution follows the Australian Constitution.* ... What is to be noted is that it has added new ways of overcoming the rigidity and legalism inherent in federalism which are special to it and which are not to be found elsewhere".[42] Ambedkar in *this connection made a pointed reference to Articles 249, 250 and* 252. These constitutional provisions provide for temporary transfer of legislative authority from the States to the Union. Article 249, Clause 1, authorises the Union Parliament to legislate on subjects included in the State List whenever "the Council of States declares by a resolution supported by not less than two-thirds of the members present and voting" such legislation to be 'necessary and expedient in national interest'. Clause 2 of the said Article provides for the operation of such resolution for one year which can be extended for a further term of one year if a resolution approving its continuance is passed in the manner provided in Clause 1. Clause 3 lays down that the legislation made under the authority of such resolution ceases to operate on the expiration of a period of six months after the resolution has ceased to be in force except as respects things done or omitted to be done before the expiration of the said period. In 1950 the provisional Parliament in pursuance of this Article resolved to take powers in national interest to legislate with respect to trade and commerce within the State, and production, supply and distribution of goods (Entries 26 and 27 of List II), and the Parliament in pursuance of this resolution enacted the Essential Supplies (Temporary Powers) Amendment Act, 1950, and the Supply and Prices of Goods Act, 1950.

The above mentioned constitutional provision introduces for the first time "a useful innovation designed to secure greater flexibility in working the federation".[43] In the United States and Australia

[42] *C.A.D.*, Vol. VII, p. 35

[43] H. M. Seervai in *The Law Quarterly Review*, Vol. 78, 1962.

such a constitutional technique of encroaching upon the States' sphere by the federal legislature cannot be discovered. The only fruitful means through which the federal legislature can transfer to itself the power reserved to the States by the Constitution is the means of constitutional amendment. In Canada, however, the Judiciary has enabled the Dominion Parliament to legislate on provincial matters "in time of dire necessity or grave national peril" under the "peace, order and good government" clause of Section 91. The Judiciary, however, made it clear that "This general power was operative only in temporary and overwhelming emergencies. . . ."[44] But in a recent case (*Attorney-General of Ontario* v. *Canada Temperance Federation*, 1946) the Judicial Committee sought to widen the use of the general power contained in Section 91 from 'emergency' to the 'inherent nature' of the subject-matter of legislation, viz. whether it is of national importance.[45]

Under the Canadian Constitution it is within the competence of the Judiciary to determine in each case whether the subject-matter of Dominion legislation is of national importance, and whether the circumstances would justify its intrusion into provincial fields. But under Article 249 of the Constitution of India, the Council of States and not the Judiciary of India is competent to decide whether Union legislation on a particular subject included in the State list is "necessary or expedient in national interest". Besides, the expression 'national interest' has a very wide connotation, and it includes any and every sort of circumstances justifying legislation by the Parliament on State matters.

Article 249 was severely criticised by some important members of the Constituent Assembly like H. V. Pataskar and O. V. Alagesan.[46] Their contention was that this Article was unnecessary, specially when there was an Article, viz. Article 252 providing for central legislation for States by consent, and they argued that there was no reason to believe that the States would not consent to legislation for them by the Parliament in 'national interest'. And, in their view, if the scope of the Article was more than what was contained in Article 252, then it was 'surely mischievous' and would be a 'mockery of provincial autonomy'. Moreover, as Pataskar argued, there were emergency provisions which could be

[44] *Rowell-Sirois Report*, Bk. I, Ch. IX, p. 247-52
[45] Dawson, *op. cit*, pp. 110-12
[46] *C.A.D.*, Vol. VIII, pp. 801-802

invoked if the Parliament wanted to interfere in States' affairs in national interest.

T. T. Krishnamachari,[47] while meeting the objections of Pataskar and Alagesan, argued that the process contained in Article 252 would require a lot of time, while the Centre might require powers with regard to an urgent matter 'where the provisions of the emergency section need not and could not be involved'. In such cases Article 249, he argued, would serve a useful purpose. Krishnamachari further observed that the mischief, if there was any, was limited to a very brief period, and hence, the Centre would not feel tempted to exploit this Article for extending its authority.

We are of the opinion that Krishnamachari's arguments are quite sound, and Article 249 introduces a useful legislative technique with a view to making the operation of India's federal system flexible. The situations envisaged by Article 249 are quite different from those which the emergency provisions envisage, and as they require immediate and urgent consideration, Article 252 cannot effectively deal with these situations. This is really the utility of Article 249. Besides, considering the brevity of the period during which central intervention under this Article would operate, and also considering the fact that the Council of States, which is the agency of Central intervention under this Article, is supposed to be the custodian of the States' interests, Article 249 could not constitute a serious threat to State autonomy.

Article 250, Clause 1, authorises the Union Parliament to legislate for the whole or any part of India on any subject contained in the State list when a Proclamation of emergency is in operation. Clause 2 of the said Article lays down that Parliamentary legislation of this sort ceases to operate "on the expiration of a period of six months after the proclamation has ceased to operate, except as respects things done or omitted to be done *before the expiration of the said period*". Clause 2, it is quite evident, is analogous to Clause 3 of Article 249.

In the United States there is no provision in the Constitution similar to Article 250, but through liberal judicial interpretation of 'war' power contained in Article 1, Section 8, the federal government assumes tremendous powers during national emergency. But the scheme of distribution of powers contained in the Constitution is not completely upset during emergency. As the Supreme

[47] *CAD*, *Vol. VIII*, pp. 802-806

Court observed, 'Emergency does not create power. Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved". But along with this the Court observed that "while emergency does not create power, emergency may furnish the occasion for the exercise of power", and in this connection the Court made a pointed reference to war power of the federal government[48] Thus during emergency the enumerated powers of the Congress immensely expand, but the Congress is unable to legislate on a subject reserved for the States. Similarly, in Australia judicial review has tremendously expanded federal power during emergency, and 'defence' during war period has been offered a very wide meaning[49] But, as in the United States so in Australia the federal legislature is not competent to legislate on a matter reserved for the States even during emergency But, at the same time it must be admitted that the extension of federal powers in a very comprehensive manner during emergency introduces a pronounced centralising tendency in both American and Australian federations, and affects the federal balance of power.

The power of the Union Parliament contained in Article 250 is no doubt broader than the power which the federal legislature enjoys during emergency in Australia or the United States But considering the fact that the multiple powerful disruptive forces which lie hidden in Indian soil have in them the great potentiality of doing immense mischief to India's national existence, and considering also the fact that the effective prosecution of a modern war might require total mobilization of the country's resources which the Central government can secure only under Article 250, this broad power has to be tolerated as a dire necessity, although it infringes upon State autonomy and affects the federal balance of power.

Article 251 explains the scope of Articles 249 and 250. The operation of either of these two Articles does not involve suspension of the powers of the State legislatures, although the Union Parliament is empowered to legislate on a matter enumerated in the State list. But in case of a conflict between any provision of a State law and any provision of a Union law which the Parlia-

[48] *Home Building & Loan Association* v. *Blaisdell*, 290 U.S 398, (1934) in Mason and Beany, *op. cit*, pp. 374-75

[49] J B. D. Miller, *Australian Government and Politics*, p. 146

ment has made under either of the Articles 249 and 250, the latter shall prevail over the former, and the State law will be void to the extent of the repugnancy. But as soon as the law made by the Parliament under Article 249 or 250 ceases to have effect, the hitherto void provision of the State law becomes effective. Thus the Union Parliament enjoys under Articles 249 and 250 only a concurrent legislative power in respect of the subjects included in the State list.

Article 252, which further makes the federal system of India flexible, provides for Union-State co-operation in the legislative field. As M Venkatrangaiya observes, "Federalism . . . may be of either a competitive or a co-operative character and the federalism as contemplated by the new Indian Constitution is essentially co-operative".[40] This co-operative nature of Indian federalism is clearly manifest in Article 252 which authorises the Union Parliament to legislate on State matters on the initiative of the States. Such legislation shall also apply to those States which afterwards consent to it through resolutions passed by their legislatures. As an instance of such delegation of power, we may refer to the Estates Duty Act, 1953. With the express consent of 9 Part 'A' States such as Bombay, Madhya Pradesh, Orissa, Punjab, Uttar Pradesh, etc. the Parliament included in the Act *agricultural lands situated in those states*.[41]

This constitutional provision is analogous to Section 51 (XXXVII) of the Australian Constitution which authorises Commonwealth legislation on a State matter by consent. In the United States and Canada[42] such a constitutional technique of augmenting federal authority does not obtain. Inter-governmental delegation of legislative power has not been allowed by the Judiciary in either Canada or the United States. But that has not precluded the possibility of Centre-State co-operation at legislative level. Such co-operation obtains through complemen-

[40] *I J P Sc*, Vol XI, 1950

[41] *The Estate Duty Act*, 1953, Part II, Sec. 5

[42] This constitutional device of inter-governmental delegation of legislative power was recommended for Canada by the Royal Commission on Dominion—Provincial Relations. "The delegation of power by a province to the Dominion and vice versa would be a useful device for overcoming, in practice, the difficulties which arise from the division between the provinces and the Dominion of Legislative power over many complex economic activities". *Report*, Bk. I, Ch. IX, p. 251

tary legislations by the federal and State or provincial authorities in their respective fields. Chief Justice Hughes, while delivering the judgment of the United States Supreme Court in *United States v. Bekins* (1938), endorsed federal action by State consent and co-operation "between the Nation and the States through the exercise of the power of each to the advantage of the people who are citizens of both".[53]

We have analysed the legislative relations between the Union and the States as provided by the Constitution of India. Some critics allege that the legislative relations show an unmistakable sign of over-centralization.[54] It is true that the Union Parliament has been provided with large powers for catering to the needs of a welfare state, the image of which is embodied in the Preamble and the Directive Principles of State Policy. But in providing for a strong Centre, the Indian Constitution has simply followed the world experience.[55] In all existing federations there has been a marked centralization of powers, and "virtually all the great driving forces in modern society combine in a centralist direction".[56] This centralization follows naturally from the need for adjusting governmental machinery to the shifting exigencies of a dynamic society. Centralization, according to Sait, "is generally a response to social pressure or foreign pressure".[57] In Wheare's view, the centralizing forces are "war, economic depression, the growth of the social services and the mechanical revolution in transport and industry".[58] The powers of the federal government in Switzerland have substantially increased, particularly in the economic sphere, through formal constitutional amendments, due to the compulsion of the needs of the time. In the United States and Australia the Judiciary has fully recognised the logic of the centralising forces, and has sanctioned the centralizing process by liberal interpretation of the enumerated powers of the federal government. In Canada unmistakable signs

[53] On this aspect of American Federalism, see F. R. Strong, *American Constitutional Law*, specially Strong's illuminating comments, pp. 1432-38

[54] Ivor Jennings, for instance, finds "the obvious weakness of the States" to be an important and interesting feature of the distribution of legislative power. See *Some Characteristics of the Indian Constitution*, p 66

[55] See K. M. Munshi's Article on 'Distribution of Powers' in *Indian Law Review*, 1950, Vol. IV, p. 15

[56] Lipson, *The Great Issues of Politics*, p. 315

[57] *Political Institutions: A Preface*, p 404 [58] *Op. cit*, pp 252-260

of liberal interpretation of the general power of the Dominion government contained in Section 91 of the British North America Act have, of late, been in evidence. Thus, what has actually happened in the prevalent federations has been embodied in the Constitutional fabric of India. As Ramaswami Iyer summed it up, "What notwithstanding the fiercely avowed intentions and policies of the founders of the American Constitution, has taken place in the United States and what local and provincial patriotisms have been unable to prevent in Canada and Australia, has now been statutorily formulated in India The criticisms levelled against the new Constitution in this respect cannot blind us to the necessities of the new economic and political pressures whose operation in a shrinking and interdependent world tends towards the concentration of power and control in a central organization".[39]

When the whole problem of division of power in India is reviewed in the light of the requirements of the welfare state, genuine doubts are sometimes expressed as to the ability of the Union government to carry out a comprehensive welfare programme with its powers precisely specified by the Constitution. Paul H Applebey is one distinguished doubting critic. In his opinion, the Union has been given less powers that what would be required for a "nation dedicated to the welfare state ideal". 'Epidemics' defy State frontiers, and 'the food supply' and 'the welfare of farm families' evidently fall within the purview of national responsibilities in a constitutional system endowed with welfare content But, curiously enough, public health and agriculture are included in the State list. As Applebey finally observes, "It is not too unfair . . to say that except for the character of its leadership, the new national government of India is given less basic resource in power than any other large and important nation, while at the same time having rather more sense of need and determination to establish programs dealing with matters important to the national interest".[40]

[39] *IJPSc*, Vol XI, 1950 Similarly B R. Ambedkar said: "However much you may deny power to the Centre, it is difficult to prevent the Centre from becoming strong Conditions in modern world are such that centralization of powers is inevitable". *CAD*, Vol. VII, p 42

[40] *Report of a Survey* (1953), p. 16

CHAPTER IV

ADMINISTRATIVE RELATIONS

The experiment with federalism started at a time when the economics of large-scale industrialization and the politics of welfare state ideal had not been interwoven into the texture of a Constitution. Economic activities then seldom transcended local boundaries, and the prevalence of individualistic thinking circumscribed the province of the state to maintenance of order and defence. In this environment it was possible to conceive and lay down rigid lines of *demarcation of the administrative boundaries of the* federal and regional authorities. Inevitably this rigidity in the administrative mould of federalism resulted in impatience on the part of both authorities with any sort of interference from each other, and this introduced competitive trends in federalism. As M. Venkatrangaiya observes, "This competition is seen not merely as between the central and state governments but also among the state governments themselves".[1] Competition leads to duplication, wastefulness and confusion of authority in the administrative processes. But this evil is an unavoidable consequence of the constitutional allocation of the Central and State spheres in a rigid manner.

The industrial revolution and the emergence of the welfare state ideal have altered the environment of federalism They have created problems which transcend local boundaries and assume national importance. Their solution would therefore demand some amount of Central control in State administration and increasing co-operation between the two administrative layers—Centre and State. The rigid mould of the traditional or old federations has come to be mellowed in practice, and in the older federations there is a perceptible trend towards administrative centralization,[2]

[1] *Competitive and Co-operative Trends in Federalism*, p. 3

[2] The changing social structure in the United States has introduced a broad trend towards administrative centralization. The shift from rural economy to a national and international economy, the transition from an economy of exploitation to an economy of conservation, and the gradual

while new federal Constitutions have introduced myriad techniques for securing uniformity and co-operation in administration.

The administrative power of the Union of India extends to those matters on which it has competence to make laws. Similarly, the administrative authority of the State is co-extensive with its legislative jurisdiction. But the executive power of the State with regard to the concurrent field of legislation is limited by "the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof".[3] Ordinarily the executive power in respect of concurrent list is vested in the States. But the above provision of the Constitution enables the Union Parliament to bestow such power upon the Union or to authorise the Union to issue necessary directives to the State authorities.[4] B. R. Ambedkar[5] justified this proviso on two grounds. First, it has a strong precedent in Australia where the Centre is competent to assume power to admin ster a law in respect of concurrent field. Secondly, some matters included in the concurrent list are so wide in scope that the Centre should have power to step in, if Parliament-made laws in relation to them are lightly or badly administered by the State authorities In this connection Ambedkar mentioned in particular untouchability and child marriage issues.

Although the Constitution of India provides a clear-cut distinction of legislative competence between the Union and States, it does not contain any such bifurcation of the administrative machinery The Union does not possess any exclusive machinery for administering its laws, and the States may be used as the administrative agents of the Centre. The Constitution devolves upon the States the obligation to use their executive power in such a way as to ensure compliance with Union laws.[6] Hence, it is the constitutional responsibility of a State to enforce the Union laws which are applicable in that State.[7] The Union is further

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acceptance of the idea that a national minimum standard in certain fields is desirable in public interest have contributed to a tremendous extension of the area of Central administrative action. Leonard D White, *Public Administration*, pp 138-40

[3] Article 162

[4] *Draft Constitution of India*, vi

[5] *C.A.D.*, Vol. VII, pp. 1138-1140

[6] Article, 256

[7] D D. Basu, *Commentary on the Constitution of India*, Vol. II, p. 301

authorised to issue directives to the States as may be necessary for the above purpose.[8] The Constitution does not stop here, and not being content with the general directive power relating to enfodcement of Union laws which apply in a State, it further forbids the States to obstruct or prejudice the exercise of Union executive power. Article 257 (1) states: "The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union", and the Union is empowered to issue the directives to the States necessary to ensure that end.

The Constitution also arms the Union with directive power on a few specific matttrs. Article 257 (2) says. "The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance." But this clause does not limit the authority of the Parliament to declare highways or waterways as of national importance or the power of the Union with respect to highways or waterways or the power of the Union to construct and maintain means of communication as part of its functions with respect to naval, military and air force works. The Union is also empowered to issue directives to a State as regards the measures to be taken for the protection of railways within that State.[9] The Draft Constitution did not contain any such provision. While introducing this provision for insertion in the final Consutution Ambedkar observed: " . . all police first of all are in the provincial list. Consequently the protection of railway property also lies within the field of Provincial Government. It was felt that in particular cases the Centre might desire that the property of the railway should be protected by taking special measures by the province and for that purpose the Centre now seeks to be endowed with power to give directions in their

[8] A number of Union Laws on both Union and counter subjects contain provisions of issuing directives. As Section 6 of the National Highways Act, 1956 puts it, "The Central Government may give directions to the Government of any State as to the carrying out in the State of any of the provisions of this Act or of any rule, notification or order made thereunder".

[9] Article 257(3)

[10] *C.A.D.*, Vol. IX, p. 1185

behalf".[10] The Constitution of India contains an interesting *proviso that any extra expenditure incurred by the State Government* for carrying out the directives in respect of construction and maintenance of means of communication of national or military importance or of protection of railways would be borne by the Union Government, the amount to be mutually agreed upon, or in case of their failure to agree, to be determined by an arbitrator appointed by the Chief Justice of India.

Thus the Constitution of India provides an elaborate system of central control and direction of State administration. The paramount objective of this administrative control is to secure a measure of uniformity in the administration of the constituent units The directives possess an element of compulsion, since their violation by any State would empower the Union Government to call into operation the coercive measures contained in Article 356 As Article 365 says: "Where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the *provisions of this Constitution, it shall be lawful for the President* to hold that a situation has arisen in which the government of *the State cannot be carried on in accordance with the provisions* of the Constitution" Its implication is that Article 356 automatically comes into play against the State which has failed to comply with the directives, and the President is competent to adopt the necessary measures authorised by this Article.

It has already been indicated that the Constitution does not provide for any rigid bifurcation of the administrative machinery of the Union and the States State agencies are increasingly used by the Union for administrative purposes. Railways and Ports are Union subjects, but these are protected by the States. Similarly, development, construction and maintenance of all National Highways are a Union responsibility. But the Union Government does not maintain them through its own agency; it relies upon the State Governments for their maintenance and development. The Union, of course, closely supervises this work through the Roads Wing of the Ministry of Transport by attaching Engineer—Liaison officers to each State.[11] The administration

[10] *A number of Union laws on both Union and Concurrent subjects contain*

[11] See R. A. Deshpande's article on 'Road Administration in India' *Indian Journal of Public Administration*, 1959, Vol. V, No. 1

of a large number of Union laws on concurrent subjects is also entrusted to the States. The extent of the Union's dependence on the States, whether in the matter of actual administration of Union subjects, or in the matter of securing relevant information or advice, can be measured by the fact that in West Bengal the Home Department of the State Government transacts business relating to 36 Union subjects, and the Finance Department 27 such subjects.[12] 75983

The Constitution of India provides several ways of securing the Centre's administrative control over the States Firstly, the Centre controls the States by issuing directives under Articles 256 and 257 to them in respect of administration of any subject included in the Union and Concurrent lists. We have already referred to this aspect of control. Secondly, the Centre exercises control over the exclusively State spheres like education and health That has come not through manipulation of the Constitution, nor through resort to any special provisions of the Constitution, but through massive financial participation of the Centre in State Plans. Under Article 282 the Centre provides a huge amount of tied grants to the States for financing their plans, and in consequence some measure of central control ensues.[13] Lastly, the Centre exercises control through the instrumentality of All-India Services. The members of these Services occupy what Ambedkar called, the "strategic posts"[14] all over the Union. Their service conditions are regulated by Central rules and regulations, and their ultimate responsibility lies to the Centre. But they hold the key positions in both Central and State governments. This helps to ensure integration of administration throughout the Union which is necessary to preserve the unity of the country. Besides, the manning of the principal positions in State governments by the members of All-India Services serves to bring certain amount of central control over the States. When Ambedkar said that they would occupy the "strategic posts", he must have meant that they would oversee that the administration of the States did not run in flat contradiction to the spirit of the Constitution or the

[12] See *Rules of Business* (Government of West Bengal) 1961, pp 21-23 and 25-27

[13] We shall discuss this point in great detail at a later stage in our review of the impact of planning upon Indian Federalism.

[14] *C.A.D.*, Vol. VII, pp. 41-42

important national policies To cite an instance, the Chief Secretary and the Inspector-General of Police of Assam Government refused to carry out certain instructions of the State Government in the period of linguistic riots in Assam in 1961, as they felt that the State Government's instructions dangerously violated both constitution and national policies. That these officers could uphold national policies could be ascribed to the fact that their final responsibility lay to the Centre, and the State had practically no control over their service conditions.[13]

The system of administrative control and direction is not an innovation of the makers of the Constitution of India; the model has been supplied by the Government of India Act, 1935. Article 256 is analogous to Section 122 of the 1935 Act which stated "The executive authority of every Province and Federated State shall be so exercised as to secure respect for the laws of the Federal Legislature which apply in that Province or State". Similarly, Article 257 (1) and (2) reminds a student of India's constitutional development of Section 126 (1) and (3) of the 1935 Act. Section 126 (1) said: "The executive authority of every province shall be so exercised as not to impede or prejudice the exercise of the executive power of the Federation, and the executive authority of the Federation shall extend to the giving of such directions to a Province as may appear to the Federal Government to be necessary for that purpose." Article 257 (2) of the Constitution of India is in essence a reproduction of Section 126 (3) of the Act Only Article 257 (3), which deals with Union directions to the States for protection of Railways, would not find any analogous provision in the 1935 Act.

Techniques of administration of federal laws by the constituent States and varied forms of administrative control over them are expressly provided not only by the Constitution of India, but also by the Constitutions of Switzerland, U.S.S.R. and the Federal Republic of Germany. In the Swiss Federation quite a good deal of federal laws is administered by the Cantons, and this Cantonal administration is supervised by the Federal Council to ensure that it does conform to the provisions of law. "This supervision includes not only examination of cantonal ordinances for the carrying out

[13] Ordinarily of course the members of the All India Services carry out the orders of the State Governments under whom they serve, as their immediate responsibility lies to these Governments.

of federal policy, but also the right of giving general directions to the cantonal administrations to guide them in the exercise of their functions".[16] Articles 27 and 40 may be referred to, to emphasise this aspect of Swiss constitution.[17] Under Article 27 the Cantons are required to provide primary education. But the standards—adequate, compulsory, free and secular—which the Cantons are under obligation to maintain, are contained in the Constitution, and the Centre is empowered to "take the necessary measures against cantons which fail to fulfil these obligations". Similarly, Article 40 empowers the Cantons to execute the federal laws relating to the system of weights and measure "under the supervision of the confederation". Although the Swiss Constitution does not specify the coercive measures which the Federal Assembly or the Council is authorised to adopt against any Canton failing to carry out the federal obligations, the federal government is generally found to take those steps necessary to ensure the end. In the Soviet Union, as in Switzerland, a good deal of federal enterprises and regulations is administered through the executives of the constituent units. The ministries of the U.S.S.R. are either all-Union or Union Republican ministries. While the former deal with subjects like foreign trade, railways etc., the latter manage public health, foreign affairs etc. All-Union ministries conduct their branches of administration directly, but as Article 76 provides, the Union-Republican Ministries administer their branches of administration mostly through corresponding ministries of the Union Republics. Besides, the Council of Ministers of the U.S.S.R. is empowered by Article 69 to suspend decisions and orders of the Councils of Ministers of the Union Republics in respect of those sectors of administration which fall within the jurisdiction of the federal government. These express provisions of the Constitution introduce a marked administrative centralism in Soviet federalism, and "in contrast to the United States, state authorities function as local agencies of the federal government and are subordinate to it".[18] The Basic Law of the Federal Republic of Germany, 1949 also contains several provisions

[16] Robert R. Bowie and Carl J. Friedrich, *Studies in Federalism*, p. 100

[17] George Arthur Codding, JR. *The Federal Government of Switzerland*, pp. 44-46

[18] Gsovski and Grzybowski, *Government, Law and Courts in the Soviet Union and Eastern Europe*, Vol. I, p. 71

which ensure both execution of federal laws by the constituent units and federal administrative control over them. As Article 83 provides, "The *Laender* execute Federal laws insofar as this Basic Law does not otherwise provide or permit". Federal control is exercised through its supervision over administration of federal laws by *Laender* to ensure that it conforms to applicable law. To secure this purpose the federal government is authorised "to send commissioners to the highest *Land* authorities, and with their consent or, if this consent is refused, with the consent of the Bundesrat, also to subordinate authorities".[39] The federal government is also competent, with the approval of the Bundesrat, to issue general instructions, and may, by federal legislation requiring the consent of the Bundesrat, be empowered to issue individual instructions in particular cases. The Basic Law further provides that the federal Government may adopt compulsive or coercive measures as an ultimate sanction against a recalcitrant *Laender* to ensure proper execution of federal laws.[40]

The Constitution of India provides a framework of voluntary cooperation at administrative level. As Article 258(1) states: "Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to the Government or to its officers functions in relation to any matter to which the executive power of the Union extends" Any extra cost incurred by the State for discharging such functions would, however, be borne by the Union, and the amount thereof would be mutually agreed upon, or in default, would be determined by an arbitrator appointed by the Chief Justice of India[41] The Union Government, for instance, made use of the power contained in Article 258(1) in 1950 by delegating to the government of West Bengal,

[39] The relevant provisions of the Basic Law have been taken from *Constitutions and Constitutionalism*, ed William D Andrews.

[40] It should, however, be observed here that the authority of the Centre for the purpose of ensuring due compliance of its laws and directives by the States in India is more comprehensive than the powers conferred upon the Centre by any other federal Constitution "No other Federal Constitution authorizes the Central Government to suspend the constitution of State and to assume to itself all powers which have been conferred on the States by the Constitution".—D K. Sen, *A Comparative Study of the Indian Constitution*, p. 219

[41] Article 258(3)

with their consent, the Union's functions "under the Land Acquisition Act, 1894, in relation to the acquisition of land for the purposes of the Union".[22] Article 258(2) also permits the Union Parliament through any of its laws applicable in a State to grant powers and impose duties or authorise the grant of powers and imposition of duties upon the State. The principle contained in Article 258(3) is also applicable in this case As an instance of the exercise of such power we may refer to Section 4 of the Essential Commodities Act, 1955 which authorises the Union Government through an order made under Section 3 of the Act to bestow powers and impose duties upon the State Government.

It will be seen from the above discussion that although both clauses (1) and (2) of Article 258 provide for delegation of Union functions to a State, yet a marked difference exists between the two. While clause (1) secures delegation with the consent of the State Government, clause (2) ensures it without making any reference to the consent of the State concerned. Moreover, while in the former case the granting authority is the Union executive, in the latter case it is the Union Parliament which delegates

Article 258 is in substance a reproduction of Section 124 of the Government of India Act, 1935.

The Constitution (Seventh Amendment) Act, 1956[23] has added a new Article 258A which empowers the States to delegate functions to the Union with the consent of the latter. Thus the Constitution of India provides for inter-level delegation of functions which makes operation of Indian federalism adequately flexible. Such voluntary assumption of functions of one layer of authority by the other can obtain even under the Constitution of the United States of America.[24] The national wage and hour legislation, for instance, authorizes the administrator of the law to proceed through appropriate State department with its consent for conducting factory inspections required by the law, and the State concerned would be paid for its services.[25] Voluntary cooperation of this nature at administrative level is evident also in Canada. In six of the nine Provinces there the enforcement of provincial

[22] D. D Basu, *op cit.*, p. 305

[23] Section 18

[24] Arthur W. Macmahon, *Delegation and Autonomy*, p. 54

[25] *Op cit.*, pp. 54-55 See also *Report of the Commission on Intergovernmental Relations*, p. 82

statutes in relation to police is entrusted to the Royal Canadian Mounted Police under agreements between the Dominion and the Provinces concerned, and the Province reimburses the Dominion for the service rendered in enforcing the provincial statute.[36]

Much confusion and inconvenience are sure to result from the refusal of a particular State to recognise the records and acts of *another State To eliminate such ominous possibility the Constitu*tion of India provides that full faith and credit shall be given all over the country to public acts, records and judicial proceedings of the Union and of every State.[37] Clause 2 of the said Article empowers the Union Parliament to lay down through its laws the manner in which and the conditions under which these acts and records shall be proved and their effect determined. The *Constitution also provides for execution of final judgments or* orders delivered or passed by civil courts in any part of the territory of India.[38]

Article 261 appears to have been fashioned after Sec. 1, Art. IV of the Constitution of the United States[39] which puts each State under obligation to give full faith and credit to public acts, records and judicial proceedings of every other State, and authorises the *Congress to determine the manner in which such acts and records* shall be proved, and the effect thereof. This "full faith and credit" clause is an important expedient which serves the eminently useful purpose of preventing any possible obstruction to the normal transaction of administrative business. As the American authors[40] put it, "If every state clung churlishly to its own minute forms and persistently refused to recognize records and acts of other states which did not have exactly the same requirements, there would be great confusion, inconvenience, and loss of time. To obviate such chaos the framers agreed upon a provision which orders every state to accept at full value the acts, public records, and court proceedings of all other states".

One of the essentials of cooperative federalism upon which the

[36] *Rowell-Sirois Report*, Bk II, p. 178

[37] Article 261(1)

[38] Article 261(3)

[39] See also Sec. 118 of the *Australian Constitution Act.*

[40] Harold Zink, Penniman and Hathorn—*American Government and Politics*, p. 42

basic framework of the Constitution of India is modelled is to explore suitable ways of resolving disputes between the States who normally function as independent units within their constitutionally allocated spheres. The interests of the States are, to some extent, competitive, and hence, conflicts between them inevitably arise. In the absence of any machinery for the settlement of Inter-State disputes the general scheme of harmony, which every federal polity possesses, is profoundly disturbed which may result in disintegration of the Union The judicial settlement of disputes between the States through the authority of the Supreme Court is one way accepted by the founding fathers of the Indian Constitution The other ways are adjudication of one category of such disputes by some extra-judicial body,[31] and settlement of inter-State disputes through investigation, advice and recommendation by an administrative body set up by the President.[32]

Article 262 empowers the Union Parliament to provide by law for the adjudication of any disputes relating to waters of inter-State rivers or river-valleys, and the Parliament may by law exclude such disputes from the purview of the Supreme Court or any court of law. This provision has obvious significance in the context of the various river-valley schemes which have been piloted in India. The Draft Constitution did not, however, contain any such provision. But its necessity was soon felt, and it was later on embodied in the final Constitution through an amendment. B R. Ambedkar, while proposing an amendment, observed: ". . . in view of the fact that we are creating various corporations and these corporations will be endowed with power of taking possession of property and other things, very many disputes may arise and consequently it would be necessary to appoint one permanent body to deal with these questions. Consequently it has been felt that the original draft or proposal was too hide-bound or too stereotyped to allow any elastic action that may be necessary to be taken for meeting with these problems. Consequently I am now proposing this new article which leaves it to Parliament to make laws for the settlement of these disputes".[33] That the fathers of the Constitution wisely embodied Article 262 in the final constitution is evident from the fact that occasional differences and disputes have actually

[31] Article 262
[32] *Article 263*
[33] *C.A.D.*, Vol. IX, p. 1187

arisen between States in respect of inter-State river valley projects[34] To meet such difficulties the Parliament, in pursuance of its constitutional authority, enacted the Inter-State Water Disputes Act, 1956 which empowers the Centre to set up a tribunal for the adjudication of water disputes at the request of any party to such disputes[35] The decision of the water disputes tribunal is final and binding upon all the parties to the disputes, and shall be given effect to by them.[36]

Apart from the need for the settlement of Inter-State disputes, there is also the necessity, particularly in a federation wedded to welfare state ideal, of coordinating the activities of the different States In the absence of any mechanism for effective coordination, the country's progress would be halting, unbalanced and uncoordinated Article 263 eminently fulfils this objective. The purpose of this Article is to provide a machinery which would help not only in settling the Inter-State disputes, but also in promoting coordination of Inter-State activities for the furtherance of common welfare. Article 263 authorises the President to set up an Inter-State council which would investigate into and advise upon Inter-State disputes, and make recommendations for the better coordination of policy and action in relation to any subject of common interest between some or all States, or between the Union and one or more States Such a device of Inter-State coordination obtains even in an older federation like the United States of America, although the Constitution there is silent about it. The Congress set up an Inter-State Commerce Commission under the Inter-State Commerce Act of 1887 with the purpose of facilitating Inter-State commerce through prevention of inter-regional discrimination in rates of carriers engaged in Inter-State commerce and of unlawful interference with Inter-State commerce. In Australia Section 101 of the Constitution provides for an Inter-State Commission for executing the constitutional provisions relating to "trade and commerce, and the laws made thereunder". Pursuant to this provision, an Inter-State Commission was set up under Inter-State Commission Act, 1912. But soon the High Court held that the Commission was not competent to exercise judicial power,

[34] *Review of the First Five Year Plan (Planning Commission) 1957*, p. 167. As the latest reports show, such disputes are increasing at an alarming pace.

[35] Sec. 3 of the Act, *India Code*, Vol. II, Part IV, pp 293 96

[36] Sec. 6 *ibid.*

and owing to this adverse decision the Commission was not reconstituted after the termination of its term, and since then Section 101 has not been called into action.

Article 263 empowers the setting up of more than one Inter-State council to deal with several subjects referred to in the Article. One such body set up by the President is the Central Council of Local Self-Government. The Council is composed of all the State ministers in charge of local self-government. The Council, which meets at least once a year, studies the problem of local self-government in all its facets and recommends lines of policy for adoption all over the country It is also entrusted with the responsibility of exploring ways of possible cooperation concerning local self-government matters The Council further makes recommendations to the Union government regarding distribution of grants to the local bodies and undertakes the task of periodical scrutiny of the work done with such grants It is a growing organisation Even a cursory glance at the agenda of a recent meeting of the Council would show what an important role it plays. The agenda included such items as national water supply and sanitation, augmentation of financial resources of local bodies, urban community development, dispersal of industries and establishment of committee on structure of municipal corporations.[37]

Our survey of the administrative relations between the Union and the States shows that the Constitution of India has assigned very wide sweep of administrative power to the Union. Articles 256 and 257 lay down a system of comprehensive administrative control and direction of the States. This aspect of administrative relations has come for scathing criticism.[38] The contention of the critics is that the elaborate administrative control over the States which the Constitution so expressly provides, coupled with the ultimate sanction of invoking the coercive measures embodied in Article 356 would tend to destroy the autonomy of States which is the soul of federalism As Dr. A K. Ghosal aptly expresses this idea, "The power of issuing directives to States by the Union is bad enough, being obnoxious to the spirit of federalism but enforcing them by a threat to clamp on them the emergency

[37] *The Statesman*, November 2, 1962

[38] The similar directive power contained in the Government of India Act, 1935 was found to be "a very striking derogation from provincial autonomy . ." by Dr A. B. Keith (*A Constitutional History of India*, p. 384)

provisions of Article 356 is worse still and calculated almost to sound the death-knell of federalism".[39] It is true that the provisions in the Constitution relating to control and direction of the States contain potentiality for mischief, and are capable of being abused to the utter neglect of State autonomy. But these have to be tolerated as a necessary evil in a country devoted to welfare state ideal where powerful centrifugal forces are at work. A large measure of administrative uniformity is necessary in order to attain the ends of welfare state. Many of the central laws made with a view to promoting the well-being of the people would become useless scraps of paper if the State or States owing to negligence or some political prejudice or for some other reasons lightly or badly administer them. This makes it necessary for the Centre to possess the power of control and direction of the States. Secondly, there is the problem of checking any fissiparous tendencies in any part of the country. In India the religious and linguistic differences constitute powerful centrifugal forces which sometimes threaten the very foundation of the Union. The control and direction of the States involving grant of wide sweep of power to the Centre are necessary for adequately restraining the disintegrating forces which may at any time spark off a major fire in any part of the country.[40] Whenever the fissiparous tendencies show signs of activity in any State, the Centre issues necessary directives to the State concerned as to how the State executive *power shall be exercised to check the menace.*

Thirdly, even in the traditional federations like the United States the use of the States as the administrative agents of the Centre and the administrative control over the States are not uncommon features today. During the second world war the federal government used the State officials for administering conscription, rationing, price control etc. Similarly, through the use of the spending power the Federal government in America exerts immense administrative control and supervision over the States.[41] The States have to tolerate this control lest the federal financial assistance is withheld Lastly, we may consider the question of

[39] *I J P.Sc.*, Vol XIV 1953 See in this connection, Thakurd Das Bhargava's criticism of Article 365, *C.A.D* Vol II pp 510-511

[40] B. N. Sharma, 'Relations between the Centre and the Units in the Indian Union' in *I J.P.Sc*, Vol. XI, No. 3, 1950

[41] John D. Millett, *Government and Public Administration*, pp 50 54

enforcing the directives "by a threat to clamp on the States the emergency provisions of Article 356". We believe that the founding fathers of the Constitution wisely provided for the coercive measures as the ultimate sanction of the central directives. The power of issuing directives would become meaningless unless the Centre is endowed with the necessary authority to enforce them. One is the necessary concomitant of the other Ambedkar's observation in this connection merits mention. He said: "It is quite clear in the judgment of the Drafting Committee that this is not only necessary but consequential, for the simple reason that, once there is power given to the Union Government to issue directives to the States that in certain matters they must act in a certain way, it seems to me that not to give the Centre the power to take action when there is failure to carry out those directions is practically negativing the directions which the Constitution proposes to give to the Centre. Every right must be followed by a remedy. If there is no remedy then obviously the right is purely a paper right, a nugatory right which has no meaning, no sense and no substance".[42] Suppose, a State government encourages the local disruptive forces or rides rough-shod over the nation's defence policy and the Centre issues necessary directives to the State to desist from such acts, and the State Government persistently refuses to comply. How then can the Centre enforce its directives except by clamping on the State concerned the emergency provisions of Article 356?

[42] *C.A.D.*, Vol. 11, p. 507

CHAPTER V

FINANCIAL RELATIONS

Federalism in its nature involves certain basic financial problems. The multiplicity of taxing and spending authorities in a federation may raise, as the experience of the older federations reveals, major administrative difficulties In the United States, for instance, the overlapping and conflict of tax jurisdiction between the two layers of authority led to immense inconvenience and increase in costs of tax administration[1] Besides, the close integration of Central and State financial policies, which is a necessary fiscal objective in a planned economy, is difficult to attain in a system with multiple fiscal authorities The State fiscal policies, for instance, may not accord with the Central or national fiscal policy, and this introduces serious stresses in national economy.

The second problem associated with federalism is one of imbalance as regards financial resources between the Centre and the States[2] A desirable federal ideal is allocation of resources between the two sets of authority corresponding to their functions But this is hardly a realizable ideal, because nature is not so accommodating[3] The imbalance of finance which arises from assignment of some expanding sources of huge income such as customs and excise duties to the Centre in the Constitution is sought to be removed by transfer of funds from the Centre to the States. But the dependence of the States upon the Centre for large financial assistance for carrying out their constitutionally allocated functions involves the possible danger of compromise with their autonomy In case the States prefer not to barter away their independence in lieu of central aid, the discharge of their functions may suffer in both quantity and quality. Hence the problem is how to reduce Centre-State financial imbalance without any

[1] *Report of the Commission on Intergovernmental Relations*, pp 103 04

[2] A H Birch in *Federalism and Economic Growth in Underdeveloped Countries*, p 114

[3] Sir Cecil H Kisch's Foreward to B P Adarkar, *Principles and Problems of Federal Finance*, xii

serious loss of State autonomy.

The third is the problem of imbalance between different regions of a federation. This imbalance is the product of differences in levels of economic development which lead to marked disparities in income and wealth of the constituent units. The inter-regional imbalance may stand in the way of attaining the welfare state ideal of national minimum. Besides, the inter-regional imbalance, while giving rise to mutual jealousy and tension among the component units, inevitably constitutes a perennial source of political instability. Hence, in the interest of fiscal equity and political stability the Centre should enter the field as a equilibrating agency and should offset the process of inter-regional imbalance. But in a developing economy a fiscal policy, whose supreme aim is the attainment of inter-regional balance, may come into conflict with the aim of optimum economic growth The transfer of funds from the economically rich regions to the low income areas may result in declining rate of marginal productivity of those transferred funds owing to the paucity of the productive resources in the low income areas.[4] Thus, in a federation, which is involved in a process of growth, the problem is one of promoting inter-regional balance through various kinds of financial assistance to the States in a way that does not hamper the accelerated rate of economic growth.

The allocation of resources between the Centre and the States, as we have already observed, does not equate in practice with the constitutional division of functions. The approach to the knotty problem of resources distribution in a federation ought to be based upon a rational calculation of the practical needs which comprise administrative, fiscal and the country's over-all economic needs. A single formula or slogan cannot solve the problem. Prof. Adarkar lays down three principles which, in his opinion, should guide the working of federal financial relations These are (*a*) independence and responsibility, (*b*) adequacy and elasticity, and (*c*) administrative economy.[5] The first principle demands sufficient autonomy of each of the governments in the matter of revenue collection. That is, both should have independent sources of income. The second principle emphasises the fact that income for each government should be sufficient to enable it to discharge

[4] R. N Tripathy, *Federal Finance in a Developing Economy*, Ch. I

[5] *Principles and Problems of Federal Finance*, pp 218-24

its functions in an efficient manner and should be capable of expansion in full keeping with growing needs and functions. Adarkar's third principle of 'administrative economy' denotes administrative convenience, absence of evasion, and economy in collection of taxes

Adarkar's fiscal maxims closely follow the traditional approach to federalism which conceives of the two layers of authority as coordinate and independent within their spheres. His first principle of fiscal 'independence and responsibility' carries little meaning today in the face of growing financial integration in almost every federation under the impact of planning and welfare state ideal.[4] The financial integration is particularly pronounced in new federations where a national fiscal policy is a necessary instrument of planning in a developing economy. His second principle of 'adequacy and elasticity' also carries today little practical significance in a new federation with growth-awareness, where apart from customs and excise duties direct taxes on income, both personal and corporate, have been centralised on predominantly economic grounds.[5] Inevitably the States possess only meagre and inelastic sources of income, and a regular transfer of funds from the Centre to the States enables the latter to carry out their functions Only the third maxim of 'administrative economy' is an accepted principle of federal finance in all countries It is specially relevant to new federations where the tax administration requires to be geared to the urgent needs of an accelerated economic development.

Intergovernmental transfer of funds on a considerable scale, as we have seen, is inevitable today. Such resources transfer may assume various forms: there may be transfer in part or in full of certain revenue earnings from particular taxes, or there may be what is known as grants-in-aid. Grants have different aspects. These may be used as a stimulating device to encourage the States to launch or expand a particular service.[6] Or, the aim of grants may be to exert central control over the direction of State activity. But the main objective is to ensure a 'national minimum' for the peoples of different States with varying levels of economic

[4] K V. S Sastri in *Federalism and Economic Growth in Underdeveloped Countries*, pp 129-30

[5] *Ibid.* p 130

[6] *Report of the U. S Commission on Intergovernmental Relations*, pp 125 27

prosperity.'

Grants may be conditional or unconditional. States prefer the latter, as these involve no federal control, and as they have complete freedom of planning and developing such services as they consider fit. But the merit of the conditional grants lies in enabling the federal government to exercise control over expenditure of the funds in order that the grants may be used to provide those services which are thought necessary by it or to ensure uniformity in the level of services provided by the State governments. Another aspect of the grants-in-aid is concerned with the principle of allocation. Two principles which have been frequently suggested in Canada and Australia are: (*a*) the principle of compensation, and (*b*) the principle of fiscal need. According to the first, the States should be compensated for the adverse effects of the creation of federation or adoption of some federal policies on their finances. But what is wrong with it is that it is exceedingly difficult to assess and measure the loss suffered by a State consequent upon the implementation of federal policies. Besides, such loss would be reflected in the financial position of the State, and would be considered while measuring the fiscal need In reply to the contention that the non-industrial States in Australia should be compensated for the adverse effects of national protective tariffs, the Grants Commission argued: "Experts agree that the excess cost of the tariff . . . is not measurable at present. Such burden must be reflected, however, in the financial condition of the state". It is the financial need of the State for discharging the constitutionally allocated functions "at a standard not appreciably below that of the other states" which should be the determining principle of grants in-aid.

Any specification of the quantum of grants and their spread-out between different regions or rigid enumeration of the principles of grants-in-aid in the Constitution would make the system highly immobile. The assumption of this device is the assumption of static needs of each State. But the factors in the process such as population, size, the range of social services, the level of economic development etc. are essentially dynamic, and consequently the fiscal needs of every State shift and change. Hence, the financial system must be flexible enough to adjust itself to the dynamic fiscal needs. This purpose could best be fulfilled if a special body

[1] B. R. Misra, *Economic Aspects of the Indian Constitution*, p. 30

is entrusted with the task of continuous inquest and review of the States' finances and their fiscal needs, and of apportioning the grants between the States in the light of this review.

The special body ought to combine professional expertness with functional independence The Grants Commission in Australia, which is a permanent body free from political pressures, eminently fulfils the above mentioned task In India there is a constitutional provision for a periodical review of State finances by an independent and expert body The First Finance Commission, however, felt the need for a continuous study of State Finances, and, therefore, suggested the establishment of a small, independent permanent body to collect and maintain up-to-date data to be of use to the future commissions.[10] The Royal Commission on Dominion-Provincial Relations in Canada also recommended the setting up of such an expert body.[11] In the United States of America, the Commission on Intergovernmental Relations made a suggestion for the creation of a Presidential staff agency on intergovernmental relations whose one important activity would be to study intergovernmental fiscal relations.[12]

Now we can study the constitutional background of financial relations in major federal countries and their working which profoundly influenced the framers of the Indian Constitution. In the United States Article 1, Section 8 (1) of the Constitution assigns to the Congress the power to "lay and collect taxes, duties, impost and excises, to pay the debts and provide for the common defence and general welfare of the United States". All the residuary taxing powers belong to the States The taxing power of the Centre is however subject to some constitutional limitations. Art 1, Section 9 says: "No capitation or direct tax shall be laid unless in proportion to the census or enumeration hereinbefore directed to be taken". The same Article also ordains uniformity of all duties, imposts and excises throughout the United States. As the Centre experienced a lot of difficulties in relation to imposition of direct taxes, so the 16th amendment of the Constitution was carried through to enable the Centre to impose and collect "income taxes, from whatever source derived without apportionment among the several States, and without regard to

[10] *Report of the Finance Commission*, 1952, p 110
[11] *Rowell—Sirois Report*, Book II, pp. 272-73
[12] *Report*, 1955, p 107

any census or enumeration". In regard to other direct taxes the constitutional inhibitions remain.

The working of the financial system in the United States has spotlighted one major defect overlapping of tax jurisdiction of the Centre and the States in many tax categories Such overlapping has meant a lot of administrative inconvenience and increase in costs of administration [13] Of course, many devices of mitigating the effect of tax overlapping have been explored, and a large amount of tax coordination is found in the United States; yet tax overlapping even today is an irritating fiscal problem there.

Till 1930 the States in America enjoyed almost complete fiscal independence, and "in 1930 the forty-nine governments of the United States were able to finance their activities without help". Grants constituted only a small portion of the total State income [14] But since then the quantum of grants has been increasing, and now it is quite massive.[15] The early land grants contained few conditions, but the grants as they exist now are made for specific purposes, have a lot of conditions attached to them, and detailed provisions are made for federal supervision This system of grants has been commended by the Commission on Intergovernmental Relations, and the Commission has deprecated the system of subsidy on the grounds that the latter device does not guarantee that the grants would be utilized to cater to the services considered necessary by the federal government, and the States' sense of responsibility would tend to be weakened in the absence of matching requirements. The Commission's conclusion is that "the National Government's conditional grants represent a basically sound technique, despite their piecemeal development and hodge-podge appearance".[16] In the post-war period the most important and interesting development in Federal-State financial relations has been the system of variable grants aimed at assisting the needy States with comparatively poor fiscal ability.[17] It is however confined to some fields only such as education, health etc. It may be noted here that the Commission on Intergovernmental Rela-

[13] *Report of the Commission on Intergovernmental Relations*, pp. 103-14
[14] A. H. Birch, *Federalism, Finance and Social Legislation in Canada, Australia and the United States*, p. 25
[15] *Report of the U. S Commission on Intergovernmental Relations*, p 301
[16] *Op. cit*, pp. 119-23
[17] Birch *op. cit.*, p. 268

t ons rejected the idea of equalisation of the general fiscal abilities of the States through variable grants.[18]

In Canada the taxing powers of the Provinces are confined to direct taxes and "shop, saloon, tavern, auctioneer and other licenses" for provincial or local purposes only.[19] The transfer of most costly functions to the Dominion encouraged the fathers of the Constitution to assign to the Dominion significant and comprehensive powers of taxation. Section 91(3) gives the Dominion Parliament power to raise money by any mode or system of taxation The makers of the financial settlement declined to give the Provinces concurrent power of indirect taxation, lest it be used to obstruct inter provincial free flow of trade, and they thought it politically impossible for the Provinces to take recourse to direct taxation.[20] Hence, subsidies were created to augment the provincial revenues. Subsidies, which formed the major source of income for the Provinces, were based upon the principle of per capita equality between the Provinces, and they were considered to be final, and not subject to modification with the increase in population. But almost from the beginning political pressures from the Provinces as an instrument of obtaining additional federal assistance vitiated the system, and poisoned the Dominion-Provincial political relations. "Inevitably, the tradition developed that the federal government was 'the enemy', and to claim more than was strictly necessary, to refuse any suggestion of conditions or control, and to emphasize the peculiar difficulties of its own province were the natural tactics expected of each provincial government".[21] In this atmosphere therefore a well-knit system of conditional grants with a view to encouraging certain provincial services could not be successfully built up in Canada.[22] Hence, only general and broad conditions of grants were enumerated, and federal supervision was weak. Since 1930's the situation of course has improved, and better devices of financial coordination between the Dominion and Provincial governments have been explored,

[18] *Report*, p 135

[19] Section 92 of B.N.A. Act

[20] *Rowell—Sirois Report*, Bk. I, pp. 41-46

[21] Birch, *op cit*, p 66

[22] As the Commission observes, ". . . the conditional grant, as it works under Canadian conditions, is an inherently unsatisfactory device", *Rowell—Sirois Report*, Bk. I, p. 259

the conditions of grants have been clearly specified and the Dominion control has been tightened.[23]

In recent times there has been a large amount of fiscal centralization in Canada. Under the five-year tax rental agreements between the Dominion and the Provinces (except Quebec) concluded on an individual basis first in 1947 and renewed 1952, the individual and corporate income taxes and the succession duties were transferred to the Dominion from the Provinces, the latter being compensated by an annual payment. These agreements improved the financial position of the Provinces, and at the same time, created complete federal control of the key taxes over the large part of the country. The latest agreements concluded between the Dominion and Provincial governments under the Act of 1956 contained a new approach to the financial relations based upon a recognition of the maxim of fiscal need. There are many features of the latest agreements: unconditional equalization grants to the poorer Provinces based on fiscal need; stabilization grants as a guarantee against decline in a Province's finance; and voluntary renting of income and corporation taxes and succession duties by a Province to the Dominion against receipt in payment of "the yield in that Province of the standard rate of the tax that is rented . . .".[24] All the Provinces except Quebec have entered into the agreements, and Ontario has rented only personal income taxes. However the system of renting provincial taxes through voluntary agreements has come for serious criticism, because this involves serious loss of fiscal independence for the Provinces.

In Australia the taxing power is concurrent with the exception of customs and excise duties which have been confided exclusively to the Commonwealth by Section 90 of the Constitution. The States' taxing powers are further limited by the fact that the Commonwealth legislation in cases of repugnancy has primacy. During the last war the Commonwealth, in order to meet huge defence expenditure, felt the need for substantial increase in income tax, but the imposition of income taxes at varying rates by the States stood in the way. With a view to removing this difficulty the Four Acts known as Uniform Tax Plan were

[23] B. N. Ganguli in *Changing India*, p. 99

[24] R. M. Dawson, *The Government of Canada*, pp. 131-36

passed in 1942 despite unanimous opposition of the States to the plan[25] The Uniform Tax Plan offered to the Commonwealth *income tax a distinct priority over State income tax during the* continuance of the war, and provided for compensatory grants to the States which would agree not to impose income tax. The High *Court in its judgment, when the Plan*[26] *was contested, indicated* that the Plan was permanently valid, and held that the Commonwealth Parliament could legally persuade the States to abdicate their taxing powers by making it a condition of a grant under Section 96[27] The Commonwealth Parliament could levy income tax, if it desired, at any rate which would leave nothing for the State to tax This made the States leave the field of income tax in lieu of federal grants The High Court judgment enabled the Commonwealth to carry the Uniform Tax Plan on a permanent basis This judgment has a major consequence for Australian federalism: the fiscal independence of the States can legally be *whittled down by the Commonwealth, if it so desires.*

An important aspect of the Australian financial system is the rational way in which the special grants are given to the three *claimant States, Western Australia, Tasmania and South Australia.* The Commonwealth Grants Commission set up in 1933, after a thorough review of the finances of the claimant States, recommends to the federal government the quantum of the grants to be given to each State The Commission which, because of its independence and expert knowledge, is a much respected body in Australia, has accepted the sound principle of fiscal need as the basis of grants[28] Grants in Australia, which have been progressively *increasing, are both conditional and unconditional, and in recent* times the amount of conditional grants has increased with a view to making the expenditure of the grants conform to federal policies.

This *survey of the constitutional background and of recent* trends[29] in federal-state financial relations in the above three

[25] Birch, *op. cit*, p 118

[26] A further State challenge to Uniform tax was rejected in 1957. See J. D B Miller, *Australian Government and Politics*, p. 150

[27] Ross Anderson in *R. Else Mitchell, Essays on Australian Constitution*, pp 104-106

[28] *Birch, op. cit, p. 135*

[29] On recent trends, see *Report of the Finance Commission*, 1957, pp. 17-22, and R. N. Bhargava, *The Theory and Working of Union Finance in India*, pp 45-49

countries spotlights certain significant facts: (*i*) the evil of administrative inconvenience resulting from overlapping of tax jurisdiction; (*ii*) increasing financial centralization in varying degrees; (*iii*) progressive rise in federal financial assistance to the States leading to increasing decline in States' financial autonomy; (*iv*) the need for an independent body to make a sustained study of State finances and to put the matter of grants on a rational basis.

The financial relations between the Union and the States in the Constitution of India follow closely the pattern contained in the Government of India Act, 1935, and their architects appear to have taken in their frame of reference the fiscal experiences of the older federations. The Constitution has provided specification in a comprehensive way of the competence in matters of taxation of both Union and the States. This demarcation of the taxing powers in a rigid and elaborate manner of each of the governments has the merit of avoiding confusion and overlapping of tax jurisdiction. In the older federations the prevalence of a concurrent zone in matter of taxation resulted in double and multiple taxation with its attendant inconveniences for both tax payers and tax collectors. Broadly speaking, in the Constitution of India the taxes which have a locally circumscribed base have been confided to the States, whereas taxes with broader inter-State base rest with the Union. The residuary taxing authority is assigned to the Union.[30]

Taxes on income other than agricultural income, corporation tax, customs and excise are some of the characteristic taxes falling within the taxing jurisdiction of the Union, while taxes on agricultural income and sales tax are certain important sources of revenue for the States. The following table would show the distribution of taxing competence between the Union and the States:

[30] *Entry 97 of List I, Seventh Schedule.*

TABLE 1

Union	*States*
Taxes on income other than agricultural income.	Land Revenue.
Customs Duties	Taxes on agricultural income.
Duties of Excise except on alchoholic liquors and narcotics	Duties in respect of succession to agricultural land.
Corporation Tax.	Estate duty in respect of agricultural land.
Taxes on capital value of the assets of individuals and companies (exclusive of agricultural land)	Taxes on lands and buildings.
Estate and Succession Duties on non agricultural property.	Taxes on mineral rights subject to any limitations imposed by Parliament.
Terminal taxes on goods or passengers, taxes on railway fares and freights	Duties of excise on alchohol, opium etc.
Taxes on transactions in stock exchanges and future markets	Taxes on the entry of goods into local area for consumption or sale.
Rates of stamp duty on bills of exchange etc	Taxes on consumption or sale of electricity.
Taxes on sale or purchase of and advertisements in newspapers.	Taxes on the sale or purchase of goods, other than newspapers
Taxes on Inter-state sales.	Taxes on advertisements other than advertisements in newspapers.
Any tax not mentioned in either of Lists I and II.	Taxes on goods and passengers carried by road or on inland waterways.
	Taxes on vehicles.
	Taxes on animals and boats
	Tolls.
	Capitation taxes.
	Taxes on professions etc.
	Taxes on luxuries.

The above table would require some amount of elucidation. First, the taxing authority of the States is debarred from inter-State sales by both judicial decisions and the Constitution (sixth amendment) Act, 1956. *In Bengal Immunity Co. Ltd.* v. *The State of Bihar* S. R. Das, Acting C.J, while delivering the judgment of the Supreme Court, observed: ". . . until Parliament by law . . . provides otherwise, no State can impose or authorize the imposition of any tax on sales or purchase of goods when such sales or purchases take place in the course of inter-State trade or com-

merce. . . ."[31] Secondly, Union taxes can be classified under the Constitution into several clusters: (*i*) Some taxes such as stamp duties are imposed by the Union but are collected and taken by the States,[32] (*ii*) taxes, for example succession and estate duties (*except on agricultural land*), taxes on railway fares and freights etc. are imposed and collected by the Union, but the entire proceeds are distributed among the Stats;[33] (*iii*) there are some taxes such as taxes on non-agricultural income (and the union excise duties which may be shared with the States) which are levied and collected by the Union, but the proceeds thereof are shared between the Union and the States,[34] and (*iv*) certain taxes such as corporation tax, customs duties are levied, collected and appropriated by the Union. Besides, the Union Parliament is authorised by the Constitution to increase any of the duties or taxes mentioned in Articles 269 and 270 by a surcharge for exclusive Union purposes.[35]

Considerations of administrative, fiscal and development needs have in India led to centralization of relatively important and expanding taxes. Customs and excise duties form a substantial portion of a country's total revenues, and they have to be used by the Central government with a view to keeping the price-level and balance of payments position outside the danger zone in a developing economy where under the spurt of development these are likely to be profoundly disturbed.[36] Similarly, income tax has been federalized in India, because an accelerated economic growth demands free movement of resources into those areas where they can have optimum utilization, and this is possible only when uniformity of inter-State rates is ensured. Any concurrent jurisdiction on income tax as exists in the older federations[37] is sure to result in double or multiple rates with all their complexities, and

[31] *S.C.J.*, 1955. *See also Supreme Court's Judgment in the case of Messrs. Mohanlal Hargovind Das* v. *The State of Madhya Pradesh*, S.C.J., 1956 and also the judgment in the case of *India Copper Corporation Ltd.* v. *The State of Bihar and others*, S.C.J., 1961 (1)

[32] Art. 268 (1)

[33] Art 269 (1)

[34] Arts 270 (1) and 272

[35] Art 271

[36] K. V. S. Sastri, *op. cit.*, p. 130

[37] Of course in recent times in both Australia and Canada there has been centralization of income tax.

may hinder the objective of giving full scope to the principle of progression. Besides, State control of income tax would involve administrative inconvenience, as there would be difficulties of assessment in the case of nation-wide companies. All these considerations called for providing federal control of income tax in the Constitution of India But the federalization of the most revenue-earning and elastic taxes inevitably creates a problem—the problem *of an imbalance as regards resources between the Centre and* States The founding fathers were quite aware of this problem, and in order to tackle it provided for sharing between the Union and States of income tax, and if the Union Parliament by law so provides, of Union excise duties This is a unique feature of the Indian Constitution which is nowhere else to be found. In India income tax operates as a balancing factor[38] (although its importance in this respect is declining), and helps in bridging to a significant extent the gap in resources between the Union and the States

The proportion of the proceeds of income tax between the Union and the States is not fixed in the Constitution, but is prescribed by the President of India, and the States' share shall be distributed in the manner as may be prescribed by him "after considering the recommendations of the Finance Commission"[39] Some of the members of the Constituent Assembly, however, wanted to make the proportion, and also the principles of distribution among the States, fixed. U. N. Barman, for instance, through an amendment sought to fix the percentage of income tax proceeds for the States at not less than sixty per cent and the principles of distribution proposed by him were. 33⅓ per cent on the basis of population, 58⅓ per cent on the basis of collection and 8⅓ per cent in such manner as may be prescribed [40] Barman argued that in the

[38] D Bright Singh's Article in the *Journal of Indian Economic Association*, December 1953, pp. 138-49

[39] Art. 270 (4)

[40] Barman's proposed principles of distribution were those recommended by the Expert Committee (*C.A.D*, Vol IX, p 217), and the Committee also recommended the States' share of income tax at 60 per cent (*C.A.D*, Vol. IX, p 218) The Expert Committee's principles of distribution were rejected by the Committee which consisted of B K Nehru and Adarkar According to Nehru—Adarkar Committee the principle of distribution should be population, area and per capita income These are the tests which have been explored by the Commonwealth Grants Commission in Australia in

absence of certain fixity the States would find it extremely difficult to plan and launch any permanent developmental programme.[41] The majority of the members of the Assembly, however, did not favour the idea of introducing any rigidity, and wanted to leave the question of proportion or of distribution flexible. This approach is rational inasmuch as the factors in the process are dynamic, changing as the conditions shift. Periodical review of the financial needs of both Centre and the States, and the prescription of the percentage of the income tax to be alloted to the States and of the basis of their distribution in the light of the review, are, *therefore, a dire necessity. Thus the Constitution*-makers did the right thing in not fixing the States' share of income tax or the basis of allocation amongst the States, and in leaving the issue adequately flexible.

The assignment of authority to the President in the matter of prescribing the proportion of income tax revenue for the States, and of the manner in which such sum would be distributed among the States, was looked upon with disfavour by some members of the *Constituent Assembly. Their contention* was that in parliamentary democracy the authority of the Parliament in relation to financial matters must be supreme, but in fact the Constitution had made it secondary to the authority of the President.[42] But

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the light of its experience (*C.A.D.*, Vol. IX, p. 217) Different Provinces (now States) suggested varied principles of distribution from the standpoint of their particular interests. As the report of the Expert Committee said: 'Bombay and West Bengal support the basis of collection or residence, the United Province that of population and origin (place of accrual); Orissa and Assam want weightage for backwardness" (*C A D*, Vol IX, p. 211) Collection is by and large an unsound basis, because the place where the tax is collected does not necessarily contribute to the earning of the whole profits of the business houses. Nation-wide companies do business in more than one State, and although the profits are collected at a place, it is impossible to calculate what percentage of the profits earned has been contributed by the State which is the place of collection. See B R. Misra, *op. cit*, pp. 33-34 But there is "a core of incomes—particularly in the range of personal and small business incomes—which could be treated as of local origin" (Finance Commission Report, 1952, p 76) Hence, the basis of collection should be given some weight in the calculation of each State's share of the total States' share of income tax.

[41] *C.A D*, Vol. IX, p. 210

[42] See Shiban Lal Saksena's and K. T. Shah's views, *C.A.D*, Vol. IX, pp. 309, 318 and 321

the predominant feeling was that in case the Parliament be made supreme, the selfish politics of big States would decide with the help of their massive majority in the Parliament the question of apportionment in their favour and to the detriment of the interests of the smaller States.[43]

But the sharing of taxes, whether of income tax or of central excise duties, may not be sufficient in case of some States to balance their resources against their functions. Some additional transfer of resources from the Centre to the States is, therefore, necessary The Constitution of India with a view to achieving this purpose has provided for a system of grants-in-aid. In this connection Articles 275 and 282 are relevant. The former Article provides for grants being made to the States which are in need of assistance, and it is obligatory to consider the recommendations of the Finance Commission. This Article occupies a significant place in that important portion of the Constitution which deals with the allocation of revenues between the Union and the States. But Article 282 falls in the section on "Miscellaneous Financial Provisions", and only states that "the Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws". Thus, from the strict constitutional standpoint, while Article 275 is an appropriate provision, Article 282 is a residuary clause, and hence the former is relatively important.

We have seen that the Constitution makes it obligatory to consider the recommendations of the Finance Commission before the Centre decides the question of divisible taxes under Articles 270 and 272 or the question of grants-in-aid under Article 275(1). The Finance Commission is an impartial, expert body deriving its authority directly from the Constitution, and as such its recommendations carry a special sanctity Article 280 requires the President to set up at the expiration of every fifth year a Finance Commission whose duty shall be to make recommendations to the President as to (i) "the distribution between the Union and the

[43] C. H Alexandrowicz, *Constitutional Developments in India*, pp. 197 198. At the Conference of both Central and Provincial governments it was agreed *to leave the matter of percentage of income tax proceeds to be prescribed* by the President and it was decided that no proportion should be fixed in the Constitution itself. See B. R. Ambedkar, *C.A.D.*, Vol. IX, p. 221

States of the net proceeds of taxes which are to be, or may be divided between them . . . and the allocation between the States of the respective shares of such proceeds" and (ii) "the principles which should govern the grants-in-aid" under Article 275.[44] Some important members of the Constituent Assembly, in their zeal to make the Centre as independent as possible in finance, wanted to circumscribe the power of the Commission to the initial fixation of the shares of the Centre and the States.[45] But apprehending that in the absence of recommendations of an impartial body like the Finance Commission regarding distribution of shared taxes between the Union and the States, and of their respective shares, between the States the President would be put in an uncomfortable position of being subjected to pressures from the Provinces, the Assembly finally did not agree to the above suggestion of some of its members. As Ambedkar argued: ". . .the Finance Commission will be acting as a bumper between the President and the provinces which may be clamouring for more revenue from income tax".[46]

Before we review the working of Union-State financial relations particularly in the light of the reports of the Finance Commissions, it would be worthwhile to discuss an important aspect of the financial relations viz. Principle of Immunity of Instrumentalities. One important federal maxim is reciprocal immunity from taxation for both federal and State properties. Section 125 of the British North America Act provides this in Canada, while in Australia this is ensured by Section 114 of the Commonwealth of Australia Act which, however, empowers the State to tax Commonwealth property if allowed by the Commonwealth Parliament. In

[44] Article 280 (3)

[45] See H. N. Kunzru's views, *C.A.D.*, Vol. IX, p. 304

[46] *C.A.D.*, Vol. IX, pp. 313-15. See T. T. Krishnamachari's views, *C.A.D.*, Vol. IX, pp. 325-26. T. T. K. expressed the opinion that the Finance Commission, like the Australian Grants Commission, would be "an aid to the administrative machinery even though created by an article in the constitution, and their recommendation must be decided on by the executive, in consultation with the various Ministers of the States". We however do not agree with this view. As the Finance Commission is a creation of the Constitution, so its recommendations, unlike those of a simple administrative body, have a special sanctity which must not be impaired by some arbitrary decisions of the executive in relation to those recommendations. Happily the convention of accepting the substance of Finance Commission's recommendations has developed in India.

the United States of America the Constitution does not contain any such specific provision, but the principle of reciprocal immunity has been evolved by judicial interpretation. This principle is good so long the functions of the government are circumscribed within a narrow province of order and defence. But complexities inevitably arise when the functions expand under the influence of the welfare state ideal, and the government pursues an active policy of nationalisation of industries or increasingly enters the field of industrial and commercial activities. Under the circumstances any rigid adherence to the principle of mutual exemptions is not possible In the older federations as a result of compulsion of circumstances the principle has largely been modified. In the United States of America, for instance, the federal government makes various payments to the States on its property holdings, although in many cases it does not pay at all. Recently the Commission on Inter-governmental Relations recommended the introduction of a broad-based system of payments in lieu of property taxes to the States in order to protect their financial ability.[47]

Article 285 of the Constitution of India states: "The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State". There are further limitations upon the taxing authority of the States. The States are debarred, unless the Parliament otherwise provides, from levying taxes on electricity which is consumed by the Government of India or sold to the said government for its consumption.[48] Similarly, "save in so far as the President may by order otherwise provide, no law of a State in force immediately before the commencement of this Constitution shall impose or authorise the imposition of, a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by any existing law or any law made by Parliament for regulating or developing any inter-State river or river valley".[49] This provision has the obvious purpose of assisting the plan of setting up inter-State multipurpose river-valley projects However some amount of flexibility has been introduced in the operation of this provision by enabling a State legislature with the consent of the President to

[47] *Report*, p 108
[48] Art 287
[49] *Art 288 (1)*

levy or to authorise the levy of any tax as specified in Article 288(1)[50]

The Constitution of India lays down a limited principle of mutual immunity. Article 289(1) provides exemption of property and income of a State from taxation by the Union. But a proviso is tied to this general clause. The Union Parliament is authorised to impose taxes on any trade or business, or any property or income connected therewith save such trade or business "which Parliament may by law declare to be incidental to the ordinary functions of government"[51] Some members of the Constituent Assembly, notably the members of Mysore and Travancore and Cochin, urged full recognition of the principle of mutual immunity. Their contention was that the power of the Union to tax State properties would hamper the discharge of welfare functions by a State viz, the nationalization of public utility services and the expansion of industrialization on State's initiative[52] In order to allay this apprehension expressed by a powerful section of the Assembly one important member of the Drafting Committee, Alladi Krishnaswami Ayyar, and the then Finance Minister of India, Dr. John Mathai, assured them that the operation of this provision would never have the effect of hindering the interests of the States. As Dr. Mathai observed: "As things are shaping today, and as we realise more and more the need for a united structure in the country, both politically and economically, the identity of interests between the Centre and the States is bound to be extremely close If by the operation of a provision of this kind it is found that the finances of a State are rendered difficult, then it is a problem which will cause anxiety not merely to the State, but to the Centre also . . . it is not our intention to levy any tax of the kind referred to in this provision upon industries run by States whose object is to produce services of a public utility character. If it happens that the revenue resources of a State are seriously crippled by taxation under this provision, then, assuming that the development projects are projects of national importance, it automatically follows that there is a corresponding obligation which will fall upon the Centre to make up so far as

[50] Art. 288 (2)

[51] Clauses 2 and 3 of Art 289

[52] See the views of P. T. Chacko and S. V. Krishnamoorthy, *C.A.D.*, *Vol. IX, pp. 1161-62*

its resources permit such shortfall as might occur in the financial resources of the States".[53]

In spite of such assurances it may be observed that this provision is unfortunate, and the absence of any guarantee of full immunity in the case of States is unfair to the States. Taking a long-range view the assurance of a particular government is not of much importance What is important is an express guarantee by the fundamental law of the land It is true that clause 3 of Article of 289 provides an element of elasticity by enabling the Centre to exempt from taxation the commercial and industrial articles of a State of public utility character. But the threat of the Union taxing "the properties of a State indiscriminately" with its corrosive effect on a State's economy always looms large on the horizon.

Now we can examine the working of the Constitutional provisions dealing with inter-governmental financial relations in the light of the reports submitted by the Finance Commissions The First Finance Commission in the report submitted in 1952 after considering all the circumstances recommended 55 per cent of the net revenue from income tax as the share of the States, although it was not of the order suggested by the majority of the States.[54] On the question of exploring some rational basis of allocating between the States their share, the Commission was confronted with the problem of reconciling irreconcilable suggestions from the States. These suggestions ranged from collection to the per capita income and financial needs of the different States according to various criteria[55] The Commission, however, accepted the need as the principal criterion of allocation, and population as the broad measure of the need But as the principle of collection could not altogether be ignored in view of the fact that "all over the country a core of incomes—particularly in the range of personal and small business incomes—could be treated as of local origin", the Commission recommended the distribution of 20 per cent of the States' share of income tax on the basis of collection and 80 per cent on the basis of population.[56] The Second Finance

[53] *C.A.D.*, Vol IX, pp. 1169 70. See Alladi Krishnaswami Ayyar's speech, *C.A.D.*, Vol IX, pp. 1167 69

[54] *Report*, p 71

[55] *Ibid.*, p 73

[56] *Ibid.*, pp 75-76

recommended the restoration of the formula of the First Commission that 20 per cent of the total States' share should be apportioned on the basis of collection, and 80 per cent on the basis of population.[61]

The First Finance Commission broke a new ground when they recommended that 40 per cent of the Union excise duties on matches, tobacco and vegetable products should be allocated among the States on the basis of population.[62] This recommendation was accepted by the government and finally incorporated in the Union Duties of Excise (Distribution) Act, 1953 The Second Commission widened the coverage of duties to be shared from three to eight. The Commission agreed to some extent to the demand of the States for massive increase in the number of duties to be shared after considering some important facts. The first fact which was considered was that as income tax was ceasing to be an expanding source of revenue, so "any further substantial devolution of revenues to the States by sharing of taxes will have to come from Union excises"[63] Secondly, both coverage and yield of Union excise duties were showing considerable elasticity. But the States' share was fixed at 25 per cent of the excise duties to be shared. Regarding distribution among the States, the Commission adhered to the First Commission's suggestion of population as the sole basis of allocation Consumption as a possible basis of distribution was not favoured by the Second Commission on the reasoning that the operation of this principle would have the effect of favouring the relatively urbanised states[64] The Third Commission looked at the question of sharing of excise duties with a large amount of catholicity and in the context of economic planning As the Commission aptly observed: "We consider that the inadequacy of resources that has developed in the States is attributable mainly to the planning process and this inadequacy may become more pronounced with the completion of each successive plan for some years to come The viability of the States could best be secured by a larger devolution of the Union excise duties and this should be effected by providing for the participation of the States, by convention, in the proceeds of all

[61] *Report*, p. 18
[62] *Report*, p 82
[63] *Report*, p. 42
[64] *Report*, p 44

Union excises. It would give a great deal of psychological satisfaction to the States and dissipate any suspicion that the Union is pursuing a policy of excessive centralisation of resources".[65] We believe that this approach is rational not only in the context of planning but also of federalism, for any suspicion of the States towards the Centre tends to pollute inter-governmental relations. The Commission guided by this rational approach recommended as States' share 20 per cent of all Union excise duties. In the matter of distribution also the Third Commission gave a spurt of rational thinking, and thus while they wanted to continue the population as the predominant basis of distribution, they in addition recommended that the States' share should be distributed amongst them in such a manner as to bring "all the States, as far as possible, to a comparable level of financial balance".[66] We give below a table depicting over some years the States' total share of the divisible taxes:

TABLE II

(Rupees in Lakhs)

Taxes	*1958-59*	*1959-60*	*1960-61*
1. Income Tax			
Total yield	17,201	14,883	12,750
States' share	7,580	7,932	8,698
Grants to States to compensate for loss in income tax share		301	2,415
2. Union Excise Duties (Total yield)	31,294	36,065	39,498
States' share	7,299	7,470	7,500

SOURCE: *Report of the Third Finance Commission*

The Constitution of India, as we have already seen, provides for grants-in-aid in addition to sharing of taxes as a technique of transfer of resources from the Union to the States. Mere sharing of taxes does not help in covering the total needs of the States.

[65] *Report*, p. 21
[66] *Ibid.*, p 22

Grants-in-aid is a device to make good the deficiency. Grants under *Article 275 (1) are to be made to States in need of assis*tance after considering the recommendations of the Finance Commission.

The First Finance Commission specified certain principles which should govern the grants-in-aid falling under Article 275 (1). The principles are: (*i*) budgetary needs; (*ii*) effort of a State to raise maximum revenue through taxation; (*iii*) economy in expend ture meaning that the State should practise the principles of financial prudence and make the optimum utilization of its existing resources before asking for assistance; (*iv*) standard of social services which means that the grants should have the purpose of *reducing the inequality in respect of standards of social services* rendered by the States; (*v*) specific obligations i e. assistance should be given to a State which has to shoulder some special burdens or obligations of national importance involving severe strain on its financial position; and (*vi*) broad purposes of national importance meaning that grants should be paid to the less advanced States to assist them in attaining certain minimum standards[47] The Commission, after stating these principles of general nature, sought to explore the suitable criteria of allocation of grants to the States. According to them, grants should cover the "normal budgetary needs" of the States in need of assistance and *should permit a "reasonable margin for expansion"*, and secondly, the grants should sufficiently meet the expenditure necessary for shouldering the special obligations created for some States by partition of the country. The Commission, while taking into account these considerations, recommended assistance under Article 275 (1) to only seven States. The Commission in addition recommended grants-in-aid for expanding primary education to seven States underdeveloped in respect of education.

The Second Finance Commission had to consider the needs of the States in the context of planning which had already begun. They, while agreeing with the basic approach of their predecessors, sought to interpret the criterion of fiscal need in a comprehensive manner by "taking into account the impact of the completion of the first five year plan and the needs of the second". Thus, in the opinion of the Commission, the fiscal need in this broad sense would determine the claim for or quantum of grants-in-aid of a

[47] *Report*, pp 96-98

particular State. Another important principle spotlighted by the Commission is that the difference between the ordinary revenue of a State and its normal unavoidable expenditure should as far as possible be bridged up by sharing of taxes. "Grants-in-aid should be largely a residuary form of assistance given in the form of general and unconditional grants" [68]

After examining the fiscal needs of the States the Commission recommended grants under substantive portion of Article 275 to eleven States.

The Third Finance Commission, which was asked by the President to make recommendations in regard to the States in need of assistance and sums to be allocated to them under Article 275 (1), specially in the light of the requirements of the third five-year plan, considered the principle of the fiscal needs of the plan. They, while considering this principle, took into account two important facts. First, it was felt that full recognition of the principle would hamper the work of periodical reviews of the plan and the work of the plan itself where there is a felt necessity to ensure that the States conform to some uniform pattern of national priorities. Secondly, it was also felt that total neglect of the principle would amount to perpetuation of the discontent of the States which universally prevails owing to several restrictions and rigid conditions being attached to central assistance for the purposes of plan.[69] The Finance Commission in the light of these considerations found that the total grants-in-aid should be of a size that "would enable the States, along with any surplus out of the devolution, to cover 75 per cent of the revenue component of their plans".[70] Besides, the Commission recommended a special-purpose grant of Rs. 36 crores for the development of communications to be distributed among ten States.

Apart from the statutory grants to be given to the States on recommendation of the Finance Commission without strings and

[68] *Report*, p. 25

[69] A characteristic attitude of the States is revealed in the following. "It is improper that the pattern of assistance should be utilized by the Central Government and by the Planning Commission to influence priorities for the State sector, and attempts made to superimpose a system of priorities which may have no relevance to the diverse conditions prevailing in the various states". (*Memorandum of the Government of West Bengal to the Third Finance Commission*, 1961, p 40)

[70] *Report*, pp. 31-32

conditions, the system of grants in India includes also discretionary grants under Article 282. The latter grants are given to the States for specific development schemes, centrally assisted or centrally sponsored, which have been assigned priority in the plan.[71] An important feature of these grants is that they are not statutory, and hence, not compulsory, and they contain numerous conditions and riders. Their aim is to ensure implementation of national programmes and uniform planned development all over the country As discretionary grants involve a lot of central control and supervision,[72] the States in general disfavour this type of grants In this connection it would be instructive to mention the suggestions of the Third Finance Commission in respect of assistance provided by the Union to the States to meet their plan expenditure: (i) assistance, which is provided to realise national objectives such as power, flood control etc. should continue to be subjected to rigid conditions, and (ii) assistance, whose aim is to fulfil priorities which fall strictly in the State sector such as education, health etc. should be such that "the States have the freedom to reappropriate from one head of such allocation to another while adhering to the broad objectives of the plan" [73]

Before we examine the principles laid down by the Finance Commissions in respect of inter-governmental transfer of funds, and their important recommendations, we give a table below showing the amount of central assistance to the States over some years and their spread-out between statutory grants and discretionary grants.

[71] P P Agarwal, *The System of Grants in-aid in India*, p. 21. Assistance for the implementation of schemes may be fully met by the Centre or partly by the Centre and partly by the States. Regarding the system of matching grants the Second Finance Commission suggested certain modification. The schemes outside the plan involving this type of grants, if accepted by the States (they have to accept because of fear of public opinion), put the states into revenue deficits as "all their resources had already been committed for their inescapable expenditure for the implementation of the plan". To remove this difficulty, the Commission suggested that "for the future, no scheme outside the plan should be formulated on a matching basis". (*Report*, p. 69)

[72] We shall deal with this aspect of Indian Federalism—central control through financial assistance—at length at a later stage when we shall review the working of Indian Federalism in detail.

[73] *Report*, p 31

TABLE III

(Rupees in Lakhs)

	1958-59	1959-60	1960-61
1. Statutory grants in-aid under Article 275 (1) substantive provision (We exclude some minor statutory grants under Article 273, provison to Article 275 (1) and S. 74 (2) of the State Reorganization Act. Their total amount would be. 966 (for 1958-59), 1205 (for 1959-60) and 931 (for 1960-61)	3,625	3,638	3,950
2. Discretionary grants	7,687	10,971	11,378

SOURCE: *Third Finance Commission's Report*

It will be seen that under successive Finance Commissions the States are getting their share of divisible taxes at an increasing rate. While the First Commission fixed the States' share of *income tax at 55 per cent of the net revenue of the tax, the Second* and Third Commissions recommended 60 per cent and 66⅔ per cent respectively. Besides, the number of articles for the *purpose of sharing Union excise duties has been raised from 3 to* 35. Thus the aim of each Finance Commission has been to augment the resources of the States with a view to reducing the *resources imbalance between the Union and the States which has* been created by the assignment in the Constitution of relatively productive sources of revenue to the Union and of relatively *unproductive sources to the States. Secondly, each Commission's* objective in the matter of allocation of the States' share of divisible taxes has been to minimise the disparities between the States, and hence, they have *emphasized the criterion of needs,* and population as the broad measure of needs.[74] The Third Commission did the right thing in giving some weightage to the

[74] Some doubts have of course been raised as to the desirability of taking relative population as the measure of the relative needs of the states. As R. N. Bhargava argues, "per capita income indices of each State indicates

principle of collection in view of the fact that the indistrialized states' per unit expenditure on social services, and on law and order, is much higher than elsewhere. If adequate social services, and peace and order cannot be maintained, then there will be not only economic, but also political dislocation in those States affecting the nation as a whole.

In the matter of statutory grants under the substantive portion of Article 275(1), the Finance Commissions' acceptance of the criterion of fiscal need fulfils one sound condition of federal finance It may be observed here that the Commonwealth Grants Commission in Australia rejected 'disabilities' in favour of 'financial needs' as the basis of grants But the Third Commission's recommendation[15] that the total amount of statutory grants to the States should cover 75 per cent of the revenue component of their plans, is open to serious objection because it will have adverse effect on the planning process. Statutory grants are virtually unconditional, and hence, the Centre will lack the necessary power for coordinating in an effective manner the State plans The prevalent practice is that assistance for the revenue component of plan to the States is conditional (conditions of course vary from one scheme to another) and is provided under Article 282. Conditional grants are "determined after annual plan discussions and after taking into account the performance of the States, both in respect of efforts to raise resources, as well as the efficiency with which the schemes are executed".[16] This device of conditional grants is adequately necessary to ensure the fulfilment of national priorities which again is necessary for planned progress of a country. We believe that the Third Finance Commission's recommendation is based upon their belief that welfare projects included in the plan are capable of being bifurcated into national and local.[17] Thus they would like to allow the States freedom "to

more correctly the relative needs of the people of those States . . ." (*Indian Public Finances*, p 43) But the Finance Commissions found it difficult in the absence of figures for the individual States to accept *per capita* income as the basis of distribution

[15] This recommendation has not been accepted by the Union government. *Reserve Bank of India Bulletin*, April, 1962, p. 547

[16] See G R Kamath's note of dissent, *Report of Third Finance Commission*, pp 51-60

[17] See in this connection their suggestions in regard to central assistance to the State towards their Plan Expenditure, *Report*, p 31

reappropriate from one head of allocation to another" in case of grants for predominantly local matters such as education, health etc. But bifurcation by and large is not feasible for the simple reason that matters like education and health tend to become increasingly national responsibilities in a country dedicated to welfare state ideal, notwithstanding the fact that these matters are included in the Constitution in the State list. The acceptance of welfare state ideal and specially, the technique of planning as an instrument of growth necessarily involves large diminution of the autonomy of the States. Traditional federalism has come to be diluted even in the land of its birth. In the United States of America an elaborate system of tied grants has developed leading to large central control over direction of a State's policy, although that country is not tied to any comprehensive economic plan.

In a planned society weeded to welfare state ideal a large amount of central control, consequent upon grants being made conditional for the plan expenditure, inevitably arises, and it is an inescapable fact. We believe that the existing system of conditional grants for the revenue component of the plan is well suited to our purpose, although it may call for some procedural modifications which may come through discussions between Union and State representatives. The Union government has already introduced an element of flexibility by giving the State governments complete freedom to re-allocate funds from one scheme to another within a group."[78]

We may conclude our discussion by observing some important trends and tendencies which are discernible in Union-State financial relations in India. The imbalance as regards resources between the Union and the States, which a glance at the relevant provisions of the Constitution would show, has further been aggravated in recent times. We may illustrate it by referring to the recent amendment of the Income-tax Act. With exclusion of taxes paid by the companies from the definition of income tax through this amendment, the divisible pool of the tax has perceptibly declined. This increasing centralization of resources has led to growing financial dependence of the States upon the union. The following table would show the extent of dependence:

[78] See letter from the Planning Commission (No. Plan 5/2/57, dated New Delhi, the 12th May 1958) to all State Governments, item 5.

TABLE IV

TRANSFER OF RESOURCES (SHARED TAXES+GRANTS+LOANS) FROM THE CENTRE TO THE STATES

(In crores of Rupees)

Year	Total resources made available by the Centre	Percentage of (2) to total expenditure of the States (Both Revenue and Capital)
(1)	(2)	(3)
1959 60	646 5	51 1
1960 61	741 7	50 3
1961 62	866 9	51 9

(SOURCE *Reserve Bank of India Bulletin*, October, 1962)

This fact of massive financial centralization has widely been deplored in view of its adverse effect on the federal balance of power. But this trend can also be marked in the older federations. Progressive increase in the amount of resources transferred from the Centre to the States can universally be discovered. This is set out in the table below which was prepared by the Second Finance Commission·

TABLE V

	1951-52	1956-57
U.S.A (in $ millions)·		
Federal payments to both States and local governments	2,604	3,317
Canada (in $ millions)·		
(1) Tax rental payments and statutory subsidies	127 2	395 6
(2) Grants for unemployment assistance and other social services	37 3	92 5
Australia (in £ A million)·		
(1) Tax reimbursements, special financial assistance, special grants and payments under the financial agreement	162 30	204 82
(2) Commonwealth aid for roads and social services	20 59	38 93

(*Note*. Figures for Australia under column 2 are for 1952-53)

The above table reveals that increasing financial dependence of the States upon the Centre obtains in the United States of America, Canada and Australia, although their financial systems in no way are tied to any wheel of planned economy. In India, where comprehensive planning has been undertaken, increasing financial federalization and the dependence of the States are unavoidable facts, and have to be tolerated as a necessary evil.

An interesting development has taken place in the system of grants-in-aid in India As Table III would show, statutory grants under Article 275(1) have largely been outstripped by discreationary grants under Article 282, notwithstanding the fact that the former is an approtriate Article while the latter is a residuary Article. Thus the system of grants has outgrown the Constitution contributing to increasing central control over the States. This development can be ascribed to two factors: first, central taxes are very elastic and productive with the result that a sizable surplus over expenditure remains which is available for providing financial assistance to the States under Article 282, and second, this financial assistance is tied and conditional, as it is used for the fulfilment of national priorities of the plan

Another significant development is perceptibly taking place in the financial relations in India which, we believe, was not expected by the founding fathers of the Constitution. If one recalls the proceedings of the Constituent Assembly, one would find that the founding fathers relied more on shared taxes, particularly income tax, than on grants for reducing the financial imbalance between the Union and the States. But Tables II & III would show that grants are coming very near to shared taxes, and in near future may outstrip the latter. Besides, conditional grants under Article 282 have far outstripped the States' share of income tax. The States' share of income tax and conditional grants for the fiscal year 1957-58 were of the order 7343 and 5367 lakhs of rupees respectively. But in 1960-61, whereas the former rose to only 8698 lakhs of rupees, the latter reached the height of 11,378 lakhs of rupees. Several reasons can be advanced to explain this phenomenon. The first is that income tax of which 60 per cent the States get (and more under Third Commission's recommendations) has ceased to be an expanding revenue earner, whereas most other central taxes are quite elastic and expanding. The result is that in Central sphere, the available resources leave a surplus for

transfer to the States. The second reason is that this surplus is utilized by the Union government in providing conditional grants to the States for influencing priorities in the State sectors of the plan in the interest of uniform planned progress. In any case, whatever the explanation might be, the inescapable fact is that Union-State financial relations under the Constitution are increasingly being reoriented through the operation of planning mechanism.

CHAPTER VI

STATE OF EMERGENCY: UNION-STATE RELATIONS

Our discussion hitherto of Union-State relations in India has been based upon the assumption of normal situations in the country. Constitutional techniques grafted upon this assumption naturally fail to grapple with the problems of abnormal times. Thus extraordinary times would call for a re-orientation of the normal machinery of the government to fit in with new problem-situations. Under the pressure of extraordinary situations the Constitution assumes a new shape, greatly departing from its normal pattern and mode of operation. The Constitution of India in its structural design reflects an adequate awareness of the governmental needs in both normal and abnormal situations. We have already dwelt on the constitutional provisions dealing with Union-State relations under normal circumstances. Part XVIII of the Constitution contains emergency provisions with a view to effectively tackling the extraordinary situations The Constitution of India envisages three types of emergency: (*i*) national emergency; (*ii*) emergency in the States; and (*iii*) financial emergency. We shall deal with the emergency provisions in so far as these affect the Union-State relations.

Article 352 authorises the President to proclaim a state of emergency if he is satisfied that the security of India or any part of its territory is threatened by war or external aggression or internal disturbance, actual or impending. The Constitution commands the President to lay the Proclamation before each House of Parliament, and unless it is approved by each House through an express resolution, it ceases to operate at the expiry of two months. The President, of course, may revoke the Proclamation at any time by a subsequent Proclamation. Article 352 has been modelled upon Section 102 of the Government of India Act 1935, although the former is not an exact reproduction of the latter. The duration of emergency without parliamentary approval is two months under Article 352 of the Constitution,

but the 1935 Act fixed it at six months. Another point of difference between the two is that while Section 102 of the 1935 Act included only war and internal disturbance as occasions for issuing a Proclamation of emergency, Article 352 adds 'foreign aggression' to the list indicating a situation just short of formal war.

One effect of the proclamation of emergency under Article 352 is profound alteration of the federal balance of power in India. The relations between the Union and the States in executive, legislative and financial fields undergo great transformation. First, the Union executive is empowered to issue directives to the States on any matter, notwithstanding that it is one which is included in the State list, as to the manner in which their executive power relating to that matter would be exercised.[1] Thus the States automatically come under all-comprehensive executive control of the Union Secondly, the Union Parliament's law-making authority extends to any matter enumerated in the State List.[2] The important point to be noted here is that the proclamation of emergency issued under Article 352 does not result in suspension of the State legislatures; only the Parliament secures a new field of concurrent legislation During the period of emergency both the Union Parliament and State legislatures can legislate on any subject included in the State list. Besides, the power of Parliament to legislate on any matter "shall include power to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Union or officers and authorities of the Union as respect that matter, notwithstanding that it is one which is not enumerated in the Union List"[3] Thirdly, the President is empowered to modify during the period of emergency the operation of all or any of the provisions of Articles 268 to 279 which govern the allocation of financial resources between the Union and the States. But any such order of the President must not extend in any case beyond the expiration of the financial year in which the Proclamation of emergency ceases to operate, and must be placed before each House of Parliament for approval.[4]

Two points of criticism against the constitutional provisions

[1] Article 353 (a)
[2] Article 250 (1)
[3] Article 353 (b)
[4] Article 354

relating to national emergency, which were freely expressed on the floor of the Constituent Assembly, are: first, such provisions are not to be found in any other federal Constitution, and secondly, their operation would result in subversion of India's federal structure and growth of a completely centralised system with the units mercilessly reduced to the status of provinces of a unitary state.[5] The first cannot be accepted as a valid criticism, if we examine the older federal Constitutions in the light of their operation. It is true that emergency provisions of the Indian Constitution in their intensity and comprehensiveness find no parallel elsewhere. But it is equally true that the working of the older federal Constitutions has revealed that during emergency like war the Centre comes to assume a very wide sweep of authority and encroaches upon State autonomy. In Canada a doctrine of emergency powers has developed through judicial interpretation of the general clause of Section 91 of the British North America Act. During the period of national crisis such as war, actual or apprehended, invasion, insurrection or any other grave national peril, the Dominion assumes a power under this general clause which is allowed to sweep off any of the provincial powers which obstruct it. For instance, during first and second world wars the general clause of Section 91 came into full operation, and the Dominion invested itself with virtually unlimited powers.[6] The vast range of Dominion power in time of war can best be illustrated by the fact that the National Resources Mobilization Act of 1940 empowered the Dominion government 'to require all Canadians to put their persons and property at the disposal of the state', notwithstanding its direct trespass into the exclusive sphere of the Provinces in relation to property and civil rights It is, of course, true that in the United States of America and Australia no such doctrine of emergency powers has been accepted by the Judiciary. Explaining the standpoint of the American Supreme Court and the Australian High Court in regard to emergency, H. S. Nicholas observes: "In Australia, as in the United States, the doctrine has

[5] As K. T. Shah observed: " . . I have been viewing the tendency . . . of arming the Central Executive Government with excessive authority with deep misgivings. *In this particular clause there seems to be incorporated even stronger authority and worst features of centralised authority*", *C.A.D.*, Vol. IX, p. 112

[6] R. M. Dawson, *The Government of Canada*, pp. 109-10

been recognised that emergency does not increase granted powers or remove or diminish the restrictions imposed upon powers granted or reserved, but while emergency does not create power, emergency may furnish the reason for the exercise of the power".[7] In conformity with this doctrine, the war power contained in Article I, Section 8 of the American Constitution, and the defence power embodied in Section 51 (vi) of the Australian Constitution are allowed to operate during national emergency like war, and the Judiciary in both the countries has given such power a very broad meaning. In the United States during war period the war power provides the basis for comprehensive economic control and regulation by the federal government. This power has been allowed by the Judiciary even 'to cover the relocation of certain citizens away from vital defence areas'.[8] In Australia the defence power was permitted by the Judiciary in time of war to cover any and every *matter—prices, fair rents, capital issues, monetary control,* reinstatement in civil employment, public safety and order, wheat requisition, acquirement by the Commonwealth of the States' machinery for assessment and collection of income tax.[9] Thus the liberal and very broad interpretation of the Commonwealth's defence power by the High Court produced in time of war the flexibility of a unitary system in Australia.[10]

This survey leads to one conclusion: national peril like war creates centralization of authority in all recognised federations. Not only does the central authority receive a comprehensive meaning, but also it is allowed to a large extent to trench upon state autonomy. It must, however, be admitted that neither the war power in the United States nor the defence power in Australia has been construed in such a comprehensive manner as to cover emergency powers contained in Articles 352, 353 and 354 of the Constitution of India. Another significant point to be noted is that while in other federal countries the augmentation of central authority in time of a national peril has been allowed by the Judi-

[7] *The Australian Constitution*, p. 113

[8] William O Douglas, *We the Judges*, p. 41

[9] K. C. Wheare—*Federal Government*, p. 207. Of course, in some cases, the Commonwealth's attempt to enlarge its power was struck down by the Judiciary, e.g., the regulation restricting the admission of students to universities, etc., but on the whole the Commonwealth's power greatly increased.

[10] Nicholas, *op. cit.*, pp. 114-17

ciary, in India the massive power which the Centre assumes when the President declares a state of national emergency is derived directly from the Constitution. Possibly the Constitution-makers in India, in order to make such power certain, felt it wise to incorporate it in the Constitution instead of leaving this vital matter to judicial interpretation.

Now we can consider the second criticism to which we have already made a reference. It is true that national emergency suspends to a large extent State autonomy, and thus profoundly disturbs the federal balance of power. But it must be remembered in this connection that the declaration of national emergency does not result in obliteration of the federal character of the Indian Constitution, as it does not involve suspension of the State Constitution. The State legislature and the State executive, which derive their status and powers from the Constitution, continue to function as before, and their existence is not sought to be eliminated. Only the Union government secures certain extraordinary powers which override the powers of the States. Thus the national emergency affects, and no doubt in a big way, the balance of power in Indian federation, but does not destroy its character.

The need for a powerful Centre in India in time of a national peril can best be understood in the background of her history and society. Indian history is full of fratricidal wars between regions and communities which always tempted and helped the aliens to establish their hegemony in India. The possibility of repetition of history cannot easily be ruled out, for the Indian society today shows the prevalence of a large number of fissiparous forces based upon language, religion and caste. The diversity of loyalties is so great in India, and at times assumes such a violent form, that it is apprehended that primitive tribalism again raise its head to strike a deadly blow at the root of the Indian nationality. At the time of Constitution-making the disintegrating forces were already showing the chances of their revival. To the list of the traditional disruptive forces was added the menace of the violent uprising of the Communists in different parts of India in the period of 1948-50. All these caused a lot of anxiety to the Constitution-makers As one member of the Constituent Assembly observed, "There are forces of disintegration and disorder already visible everywhere. . . . . If the disorder grows wider, becomes too

much to be controlled by the local authorities . . . . a Proclamation of Emergency may be necessary. . . ."[11] In a country, where the diversity of loyalties having deep roots in history contains great potentiality for mischief, and poses a continuous threat to the very existence of the nation, drastic provisions for concentration of authority in national emergency are a dire necessity.

We have already seen that national peril like war provides the occasion for vast enlargement of central power in all recognised federations This is not surprising in view of the fact that a modern war cannot effectively be fought without somewhat total mobilisation of national resources and uniformity of policy.[12] Centralised authority in time of national emergency is all the more needed in a country where the diversity of loyalties and the prevalence of a powerful political force allied to international communism may hinder the successful prosecution of war. Suppose a party in active sympathy with an 'aggressor' country on ideological or some other grounds is in power in a particular State, and non-cooperates with the Centre's war policy.[13] What would happen if the Centre does not possess drastic emergency powers to compel that State to fall into line with it?[14] The real aim of the provision of national emergency, as we understand it, is not to subvert the federal system, but to arm the Centre with necessary powers for making the States line up with national policies in time of a national crisis.

Finally, the issue of emergency powers of the Centre boils down to the question of what is known as residual loyalty of the people in a situation of national peril Inevitably such loyalty must lie to the whole and not to the part, to the nation and not to the region The question thus is one of good citizenship. In an emergency, when the nation is confronted with a crisis, the

[11] Nazirudd'n Ahmad, *C.A.D.*, Vol. IX, p. 116

[12] As Professor Sibban Lal Saksena, while supporting the provision of national emergency, said "I think our own experience in the last war has been that war could not have been prosecuted unless the Centre had the power to make the provinces fall into line with it. There was a big famine in Bengal because the Centre had not enough powers to interfere into food arrangements in the province". *C.A.D.*, Vol. IX, p 109

[13] This would have actually happened, had Communist China made an aggression in 1958 when the State of Kerala possessed a Communist government with a pro-chinese Chief Minister.

[14] K. V. Rao, *Parliamentary Democracy of India*, p. 230

citizen rising above parochial or regional interests must view the part in the light of the whole and the momentary in the light of the permanent. As B. R. Ambedkar observed, "Could we avoid giving overriding powers to the Centre when an emergency has arisen? . . . . There can be no doubt that in the opinion of the vast majority of the people, the residual loyalty of the citizen in an emergency must lie to the Centre and not to the Constituent States. For it is only the Centre which can work for a common end and for the general interests of the country as a whole. Herein lies the justification for giving to the Centre certain overriding powers to be used in an emergency. And after all what is the obligation imposed upon the Constituent States by these emergency powers? No more than this—that in an emergency, they should take into consideration alongside their own local interests, the opinions and interests of the nation as a whole" [15]

Articles 355 and 356 deal with emergency in the States. Article 355 places upon the Union the obligation "to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of the Constitution". Thus the Centre by virtue of this constitutional obligation can encroach upon the State sphere. Article 355 describes the situations in which central intervention is possible But it is evident that this Article merely specifies the occasions for central intervention, but does not specifically state in what manner such action would take place. Although 'external aggression', 'internal disturbance' and 'constitutional breakdown' as occasions for central action have been lumped together in Article 355, a simultaneous reading of Articles 352, 353 and 356 would show that they do not call for similar action. Article 352 covers the first two situations i.e. internal disturbance and external aggression, and obviously central action in such a case would be what is contemplated by Article 353. The third situation i e. breakdown of the constitutional machinery is conceived as a situation independent of, and essentially different from, the first two situations envisaged by Article 355, and it is covered by Article 356 which can be invoked only in a situation where "the government of the State cannot be carried on in accordance with the provisions of this Constitution". Thus central action in a case of constitutional break-down would follow what is laid

[15] *C.A.D.*, Vol. XI, p. 977

down in Article 356. Article 356, therefore, cannot be called into operation in a case of internal disturbance or foreign aggression, unless that has resulted in a situation which clearly proves that "the government of the State cannot be carried on in accordance with the provisions of the Constitution". That is, a situation has developed where there has been a complete breakdown of the State's law and order machinery. Every other situation short of that is covered by Article 352. Suppose, a situation of internal disturbance has developed, but that does not conclusively prove that there has been a breakdown of the law and order machinery in a State. Could Article 356 be invoked in such a case? The answer is 'no', for the situation envisaged above is covered by Article 352 and not by Article 356. Obviously two Articles of a Constitution contemplating dissimilar actions cannot cover similar situations.

Article 355 came in for scathing criticism in the hands of the champions of the State autonomy. One member[16] of the Constituent Assembly foresaw "the destruction of provincial autonomy, the subversion of provincial autonomy by the Union Government on the pretext of averting or quelling internal disturbance". However, Ambedkar and Alladi defended the inclusion of this Article, and their arguments[17] could be summarised in the following manner. First, as the central intervention would be by virtue of some obligation devolved upon the Centre by the Constitution, so it would not be "a wanton, arbitrary, unauthorised act", and thus would not flatly contradict the character of federal Constitution. Secondly, as "the units are of different dimensions and responsible government has not been at work, in some of the units for a very long time", so there should be some check from the Centre in the interest of healthy working of the constitution. Thirdly, clauses parallel to Article 355 obtain in both American[18] and Australian[19] Constitutions.

[16] H V Kamath, *C.A.D.*, Vol IX, p 133

[17] *C.A.D.*, Vol IX, pp 132-33, and pp 150-51

[18] The obvious reference is to Article IV, Section 4 which provides: "The United States shall guarantee to every State in this Union a Republican Form of Government and shall protect them against Invasion, and on Application of the Legislature or of the Executive (when the Legislature cannot be convened) against domestic violence".

[19] The reference here is to Sections 61 and 119 of the Commonwealth of Australia Constitution Act.

We find force in these arguments of Ambedkar and Alladi. The intervention by the Centre in the State affairs, when expressly authorised by the Constitution, does not amount to destruction of the character of a federation, although it may affect its balance of power. In the case of emergency provisions such alteration in the balance of power is effective for a limited period only. The second argument is sound and touches the root of the matter. Some of the participating units in Indian federation, notably the former Princely States, had no experience of responsible government. The threat that their irresponsible acts done in disregard of the Constitution would not be tolerated by the Centre, would make them function in a responsible manner, and thus the purpose of creating responsible government in the States would be realised.

The Constitution-makers in drafting Article 355 received the necessary encouragement from the Constitutions of the older federations like America and Australia This Article is modelled largely upon Article IV, Section 4 of the American Constitution, and Sections 61 and 119 of the Commonwealth of Australia Constitution Act. The provision of the American Constitution places an obligation upon the Centre to guarantee to every State a republican form of government and to protect each of the States against external aggression, and at the request of the legislature or of the executive, against internal disturbance.

The provisions of the Australian Constitution, to which a reference has been made, appear to have been based upon Article IV, Section 4 of the American Constitution, the only difference being that while in America the Centre has the duty to ensure the republican form of government, in Australia the power of the Centre extends to the maintenance of the Constitution itself. The Judiciary in the United States has, through innumerable judgments, interpreted and thrown some light on the scope of Article IV, Section 4 of the Constitution, but in Australia no clear picture has yet emerged. Hence, our observations will be confined to the American Constitution. In the Court's view, what is really

Sec. 61: "The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor General as the Queen's representative, *and extends to the execution and maintenance of this Constitution*, and of the laws of the Commonwealth"

Sec. 119: "The Commonwealth shall protect every State against invasion and, on the application of the executive Government of the State, against domestic violence".

a republican form of government is essentially a 'political question' to be finally determined by the Centre.[20] Such interpretation obviously empowers the Centre to intervene in the affairs of a State if, in its opinion, the government of that State does not comply with the requirements of a 'republican form of government'. Of course, it is true that there is no precedent of suspension of a State government in America on the ground of its supposed *non-conformity with its constitutional obligations. In case a* serious disturbance occurs in a State, the President of the United States is empowered to march federal army into that State on the request of the competent State authority. Even when no such request is made, even when some express protest is made by the State, the President can send federal army into a State if he considers it necessary for the enforcement of federal statutes or for the preservation of federal property or for the peace in the United States or for effective discharge of some federal function.[21] President Cleveland, for instance, with a view to protecting federal property and discharging the federal function of carrying the mails, sent federal troops to Chicago during the railway strike in Illinois in 1894 notwithstanding the protests of the Governor of Illinois. President Kennedy sent federal troops to Mississipi in 1962 to enforce federal court orders to admit one negore James Meredith to the University of Mississippi despite strong protests of *the Governor Ross Barnett. Thus federal intervention even in* total disregard of the express desires of the State authorities is not an uncommon feature in the United States, and such central action authorised by the Judiciary covers more than one situation.

The above analysis shows that Ambedkar, while justifying the inclusion of Article 355 in the Constitution, was to a great extent justified in referring to the corresponding provision in the Constitu*tion of the United States. But here we must be cautious in not* carrying the analogy too far. A line of distinction must be drawn. Article 355 empowers the Centre to intervene directly in all the cases to protect a State from internal disturbance, while in the United States such central interposition is possible in most cases on the request of the appropriate State authority. Only in a few specific

[20] Edward S Corwin, *The Constitution and What it Means to-day* p 174

[21] James Bryce, *The American Commonwealth* Vol. I, pp 329 30, Munro, *The Government of the United States*, pp 595, and Corwin and Peltason, *Understanding the Constitution*, pp. 71-3

Article 356 is virtually a reproduction of Section 93 of the Government of India Act, 1935. But there is a major difference between the two. Under Section 93 of the 1935 Act the Governor of a *Province could through a Proclamation assume to himself all the* executive and legislative powers of the Province. Thus, the operation of Section 93 merely involved a shift of power from a popular possession to an irresponsible executive of the State ; it did not result in alteration of the federal balance of power.[22] But the operation of Article 356 of the Constitution would lead to suspension of the State Constitution and transfer to the Centre of all executive and legislative authority of the State. Consequently, the balance of power in the Indian federation would be profoundly disturbed.

Let us examine the circumstances under which Article 356 can be called into operation. K. Santhanam foresaw three situations where this provision could be invoked: physical breakdown of the State government owing to large-scale internal disturbance or external aggression, political breakdown owing to ministerial instability, and economic breakdown due to pursuance of misdirected financial policies.[23] The third situation foreseen by Santhanam, we believe, cannot be encompassed by Article 356; it is covered by Article 360 which deals with financial emergency. In case of disturbance, for reasons stated in connection with our discussion of Article 355, greater reliance should be placed on Article 352. Only when the disturbance takes such a dangerous proportion as to result in complete breakdown of the State's law and order machinery, use may be made of Article 356. That is, when a State government under no circumstances can maintain law and order, it conclusively proves that it has failed to discharge its constitutional obligations Some other situations can be foreseen in which Article 356 can be used. One is what is known as political breakdown It may come in a case where the ministry has lost the confidence of the State legislature, and the opposition does not possess the requisite strength to form an alternative ministry. Or, it may occur, when the party composition in the state legislature is such that no party can form a stable ministry. In both cases the working of the responsible government as contemplated

[22] An important point to be noted here is that no Proclamation could be made by the Governor under Sec 93 without the concurrence of the Governor General in his discretion

[23] *CAD*, Vol. IX, pp 153 54

by the Constitution is not possible, and hence, in both a situation is believed to have arisen in which the State government "cannot be carried on in accordance with the Constitution".

Another situation, where Article 356 may be called into operation, arises when a State government commits acts which amount to a distinct breach of the provisions of the Constitution. Suppose, the party in power persistently denies to its political opponents the privilege of law and justice, releases prisoners, who are party workers or sympathisers, convicted of murder charges, and commits some other acts which mean abrogation of the rule of law. Such flagrant breach of the constitutional provisions would justify the exercise of power under Article 356 Lastly, in the event of non-compliance by a State government with any of the executive directives issued by the Centre under different provision of the Constitution, action may be taken under Article 356 As Article 365 provides, "where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the government of the State "cannot be carried on in accordance with the provisions of this Constitution".[24] In this connection, mention may be made of Articles 256, 257, 353 and 360 which authorise the President to issue directions to the States.

Thus, four situations may be envisaged which would justify the use of Article 356: (*1*) when, due to continuous widespread disturbance, there has been a complete break-down of law and order machinery in a State; (2) when, due to ministerial instability, the working of responsible government is not possible; (3) when a State government persistently commits acts which amount to a flagrant breach of the provisions of the Constitution; and (*4*) when a State government refuses to comply with central directives issued under the provisions of the Constitution.[25]

[24] Ambedkar justified its inclusion in the Constitution by arguing that it is a "consequential article". We have already discussed this point in the chapter on "Administrative Relations", and further discussion is not necessary here

[25] In this connection the views of K Santhanam are given K Santhanam, in his recent J Franco Endowment Lectureres at Madras University, said that "the only circumstances which will justify the application of Article 356 are (*i*) breakdown of Law and Order within a State (*ii*) wide-spread

To the critics in the Constituent Assembly who visualised the abrogation of State autonomy and the establishment of a reign of central tyranny in the operation of Article 356, the reply of Alladi was that "If the Constitution is worked in a proper manner in the States, that is, if responsible government as contemplated by the Constitution functions properly, then Union will not and cannot interfere The protagonists of State autonomy will realise *that, apart from being an impediment to the growth of healthy* State autonomy, this provision is a bulwork in favour of State autonomy, because the primary obligation is cast upon the Union to see that the Constitution is maintained".[36] The purpose of Article 356, as we view it, is not to destroy State autonomy, but to facilitate the working of responsible government in the States as contemplated by the Constitution, for there should be some check from the Centre to ensure that the States function in a responsible manner. But there is always some danger of power under Article 356 being misused Suppose, a particular State is governed by a political party which is in opposition to the party in power at the Centre; in such a situation political prejudice may encourage the Centre to make an intolerant use of this Article The Constitution does not provide any safeguard against such misuse. Obviously, the remedy lies in "the growth of *healthy conventions*". *Ambedkar, while replying to the debate* in the Constituent Assembly, expressed the hope that "the President . . . will take proper precautions before actually suspending the administration of the provinces". First, warning to the State government; if that fails, fresh election to allow the people to set matters right, and if that also fails, then resort to Article 356 Thus, as Ambedkar hoped,[37] the use of Article 356 would be a matter of last resort after all other remedies fail, and thus unjust or intolerant use of this provision to the detriment of State autonomy would be adequately prevented.

Article 360 deals with financial emergency. This Article was drafted in the midst of a grave financial situation that pervaded

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confusion during general elections and (*iii*) organised terrorism or intimidation of the civil authorities". (*The Current*, December 25, 1965) It will be observed that Santhanam does not at present wholly stick to the views which he presented in the Constituent Assembly.

[36] *CAD*, Vol IX, p 150

[37] *CAD*, Vol IX, p 177

India at a time when the Constitution-making was almost reaching an end. Post-war inflation and a miserable balance of payments position were the thorny problems which confronted the first government of free India. The British government announced the devaluation of £—sterling by about 33% in September, 1949, and the Government of India, although surprised, had to follow suit, as many of the devaluing countries were India's keen competitors in export market, and hence her refusal to devalue the rupee would, as she feared, make her further suffer in export earnings But devaluation of rupee unmistakably contained a threat of further aggravation of the country's inflationary situation. The Government of India naturally sensed a crisis in the financial atmosphere.[28] Added to this was the problem of the defiant attitude of the Provinces about central suggestions in regard to economic and financial measures. Some Provinces flatly defied the repeated advice of the Centre and persisted in pursuing a policy of prohibition, notwithstanding its adverse effect upon their resources position.[29] In this situation the Centre apprehended that it might not get the cooperation of the units should an economic crisis occur, and in this connection, the blunt refusal of some Provincial governments to implement the food policy of the Government of India during the second world war gave them a reminder of posible danger. All these events created a situation in which an idea naturally prevailed that the new Constitution of India should contain some provision providing for central control over the units in the case of a serious economic or financial instability or dislocation, and Article 360 (Amendment 280A) was the logical consequence.

Article 360 provides that whenever the President believes that "a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened", he may by a Proclamation empower the Union executive to issue directives to any State to observe such maxims of financial propriety as may be specified in them and also to issue such other directives which may be, in the judgment of the President, necessary for the purpose. Any such directive may provide (*i*) for reduction of salaries and allowances of the State government

[28] There is a reference to it in the speeches of Ambedkar and Munshi, *C.A.D.*, Vol. IX, p. 361 and p. 371

[29] See in this connection Kunzru's speech, *C.A.D.*, Vol. IX, *p. 370*

employees; and (*ii*) provide for reservation of all money bills or other bills which come within the purview of Article 207 for the consideration of the President after they are passed by the State legislature.

Ambedkar, in introducing this Article, justified it on the ground of the then prevalent alarming financial situation in the country, and found its parallel in the National Industrial Recovery Act of United States in the thirties. As he observed, " . . . having regard to the present economic and financial situation in this country there can hardly be any Member of this Assembly who would dispute the necessity of some such provision . . . this article more or less follows the pattern of what is called the National Recovery Act of the United States passed in the year 1930 or thereabouts, which gave the power to the President to make similar provisions in order to remove the difficulties, both economic and financial, that had overtaken the American people as a result of the great depression from which they were suffering. The reason why, for instance, we have thought it necessary to include such a provision in the Constitution is because we know that under the American Constitution within a very short time the legislation . . . was challenged in the Supreme Court and the Supreme Court declared the whole of that legislation to be unconstitutional, with the result that after that declaration of the Supreme Court, the President can hardly do anything which he wanted to do under the provisions of the National Recovery Act. A similar fate perhaps might overwhelm our President if he were to grapple with a similar financial and economic emergency. In order to prevent any such difficulty we thought it was much better to make an express provision in the Constitution itself and that is the reason why this article has been brought forth"[30]

We believe that this analogy is unhappy. Let us see what the NIRA purported to serve Its purpose was to help industry acting under the fairly remote control of the government, revive production and remove destructive competition and to make industry recognise the right of labour to organise and bargain collectively and accept the wage and employment conditions as determined by the President[31] The NIRA was thus endowed with a welfare

[30] *CAD*, Vol IX, p. 361

[31] Mario Einaudi, *The Roosevelt Revolution*, pp 81-83 See particularly Sec. 7A of the NIRA

content, but no such purpose appears to have inspired the drafting of Article 360. But it must be admitted that the whole episode in the United States spotlighted the need for endowing the Centre with comprehensive economic and financial authority in time of a severe financial and economic dislocation, and the need for embodying an express provision to that effect in the Constitution.[32]

Kamath and Kunzru[33] apprehended that Article 360 gave a scope for gross misuse of power with a view to whittling down the fiscal autonomy of the units and ensuring complete central control over their budgetary and other financial policies As Kunzru said, "whenever there is a serious disagreement between a province and the Central Government, the President can always be persuaded to say that the financial stability or credit of the province is in danger, then the consequences envisaged by article 280A will follow". But this apprehension appears to be exaggerated, for Ambedkar and Munshi made it clear that the Article was meant to deal with a grave financial situation only. In such a case the constitutional provision of a large amount of central control over State finances is necessary, for the existence of dual fiscal authority in a federation may prevent, as it did in the United States in the thirties, the effective integration of central and State financial policies without which a major economic and financial crisis cannot be tackled. After all, as Munshi ably argued, "the economic structure of the country is one and indivisible".[34]

Suppose, a State government with a view to getting popular reduces drastically some of its important taxes or follows some other financial policies which bring the State to the point of bankruptcy. The central government repeatedly warns, but the State bluntly defies. Consequently, a situation is created which tends to threaten the financial stability of the country as a whole. Would it in such a case be unfair for the Centre to exercise power under Article 360? Unless there is such check from the Centre, the States may behave in an irresponsible manner doing

[32] It will be remembered that the American Supreme Court nullified the NIRA on the grounds that the act embodied a discretionary delegation of powers to the President, and that it failed to discriminate between direct and indirect aspects of inter-State commerce and thus trenched upon economic activities that were to be regulated by the regional governments, *Ibid*, p. 108

[33] *C.A.D.*, Vol IX, pp. 363 65 and pp. 368 71

[34] *C.A.D.*, Vol. IX, p.371

great harm to the financial system of the country as a whole. This provision has a dual purpose: first, to make the States act in a responsible manner in fiscal matters, and secondly, to secure close integration of central and State financial policies in the time of a major economic and financial dislocation. This is really the justification for the inclusion of Article 360 in the Constitution.

During the last thirteen years of the working of the Constitution there had been only one declaration of national emergency under Article 352; Article 356, which provides for suspension of a State Constitution, was called into operation on eight occasions; and no occasion has arisen for resorting to the provision relating to financial emergency.

Following Chinese aggression the President on 26th October, 1962 proclaimed a state of emergency in the country. As the Proclamation of Emergency said: "In exercise of the powers conferred by Clause (1) of article 352 of the Constitution, I, Sarvapalli Radhakrishnan, President of India, by this Proclamation declare that a grave emergency exists whereby the security of India is threatened by external aggression".[33] Almost immediately the President promulgated the defence of India Ordinance, 1962[34] under which the Centre assumed wide powers "to ensure the public safety and interest, the defence of India and civil defence and for the trial of certain offences" To some extent this Ordinance (now Act) trenched upon State sphere. For instance, the Centre might make rules providing for control of agriculture which is a State subject. Under Article 353 the Centre had issued several directives to the States. For instance, the States had been directed to pay special attention to the expansion of scientific education and technical training facilities, introduction of double shifts in the primary education stage, construction and efficient maintenance of highways and bridges which have a direct relation to war effort, the introduction of a chain of co-operative consumer stores to prevent any rise in prices, to concentrate on increasing agricultural production, raising of short-term crops and vegetables and expanding rural works pro-

[33] *The Gazette of India* (Extraordinary), Part II, Sec 3, October 26, 1962

[34] *The Gazette of India* (Extraordinary), Oct 26, 1962 See particularly Ch II of the Ordinance which deals with emergency powers This Ordinance was subsequently adopted by the Parliament as Defence of India Act.

grammes.[37] The significant point to be noted here is that many of these measures about the implementation of which the directions had been sent to the States, were determined in consultation with the State governments. That had been possible largely owing to the operation of a more or less homogeneous political system created by a single party rule in both Centre and States. If in course of time practice develops into a convention of prior discussion with the units before taking the measures which seek to encroach upon State sphere, much of the danger to State autonomy involved in the operation of national emergency would be mitigated in fact, if not in law.

The first occasion, when the power under Article 356 was exercised, occured in Punjab in 1951. Dr Gopichand Bhargava's ministry resigned, and no alternative ministry could be formed. Hence, on the basis of the report of the State Governor a Proclamation was made under which the Parliament was assigned the legislative power of the State, and the President assumed all executive powers. Later on, the Governor was vested with the executive power to run the State administration. The second instance of the President's Proclamation arose in the former State of PEPSU in 1953 when after some abortive experiments it was found that a stable ministry could not be constituted. The third instance took place in Andhra in 1954, when T. Prakasam's ministry was defeated on the crucial question of prohibition. The opposition was completely split and had nothing in common in ideologies, and hence, an alternative ministry could not be formed. Besides, a general election was due in this State within three months, and hence the Centre argued that it would be good for all the parties to have a non-partisan administration in the time of election The fourth occasion, when Article 356 was called into operation, took place in the former state of Travancore-Cochin in 1956 when, following the resignation of the Congress ministry, it was found that the party position in the legislature was such that no stable ministry could be formed The fifth instance of a Proclamation under Article 356 occurred in Kerala in 1959, and the sixth occasion when power under Article 356 was exercised took place in Orissa in 1961 when the Congress-Ganatantra Parishad coalition broke up, and it was found that no party was capable of forming an alternative ministry. Men-

[37] *The Statesman*, November 6, 1962.

tion may be made of the fact here that in no case the Centre tried to retain power longer than what was necessary, and in each case an early election was arranged to normalise the system.

The seventh occasion for the use of emergency provision of Article 356 arose when on September 8, 1964 the Congress Ministry was unseated in the Kerala Assembly. The latest occasion when Article 356 came into operation took place again in Kerala on March 24, 1965. The mid-term elections were held in Kerala on March 4, and the Leftist Communist Party emerged as the largest single party in the new 133—member Assembly with 40 seats to its credit. The State Governor had talks with party leaders and reported that the party position was such that no Ministry enjoying the confidence of the legislature could be formed The Vice-President discharging the functions of the President announced that after considering the report of the Governor and "other information" he was satisfied that the Government of Kerala could not be carried on in accordance with the provisions of the Constitution.

The President's Proclamation in Kerala in 1959 to which a reference has already been made, deserves a detailed examination, for the circumstances under which central action was taken in this cases differed from those in other cases. In this case central action was adoped against an opposition government which had not suffered, technically viewed, a political break-down. Naturally the opinion was sharply divided as to the reasonableness of such action, and it was alleged in some quarters that this action was tinged with political prejudice.

The Communist Party came to power in Kerala in 1957. But from the beginning of 1959 a mass uprising organised by all the opposition parties started against the Communist ministry whose resignation was demanded. Soon the agitation spread to every nook and corner of the State, and took the shape of almost a civil war dividing the people of Kerala sharply into Communists and non-Communists. There were serious disturbances, police firing and arrest of thousands of people. Prime Minister Nehru, after his tour in Kerala, suggested the holding of a mid term election, but this suggestion was not accepted The situation in course of time became so desperate that there was a breakdown of the law and order machinery in the State, and a condition of wide-pread insecurity came to prevail The Governor of the State B Rama

Krishna Rao, in a report to the President, found the only remedy of the situation in the exercise of power under Article 356, although the Communist government enjoyed a majority of two in the legislature. The President on the basis of this report issued a Proclamation on 31st July 1959 which is reproduced below to illustrate the nature of the operation of Article 356.

"PROCLAMATION"

"Whereas I, Rajendra Prasad, President of India, have received a report from the Governor of the State of Kerala and after considering the report and other information received by me, I am satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution of India.

Now, therefore, in exercise of the powers conferred by article 356 of the Constitution and of all other powers enabling me in that behalf, I hereby proclaim that I—

(*a*) assume to myself as President of India all functions of the Government of the said State and all powers vested in or exercisable by the Governor of the State;

(*b*) declare that the powers of the Legislature of the said State shall be exercisable by or under the authority of Parliament; and

(c) make the following incidental and consequential provisions which appear to me to be necessary or desirable for giving effect to the objects of this Proclamation, namely,

(*i*) in the exercise of the functions and powers assumed to myself by virtue of clause (*a*) of this Proclamation as aforesaid, it shall be lawful for me as President of India to act to such extent as I think fit through the Governor of the said State;

(*ii*) the operation of the following provisions of the Constitution in relation to that State is hereby suspended:—

So much of the proviso to article 3 as relates to the reference by the President to the Legislature of the State;

so much of clause (2) of article 151 as relates to the laying of the reports before the Legislature of the State, articles 163 and 164, clause (3) of article 166, articles 167 and 169, articles 174 to 186 (both inclusive), clause (3) of article 187, articles 188 and 189, articles 193 to 198 (both inclusive), articles 200 and 201, so much of clause (3) of article 202 as relates to salaries and allowances of

the Speaker and Deputy Speaker of the Legislative Assembly, articles 208 to 211 (both inclusive), the proviso to clause (1) and the proviso to clause (3) of article 213;

and so much of clause (2) of article 323 as relates to the laying of the report with a memorandum before the Legislature of the State, (iii) the Legislative Assembly of the said State is hereby dissolved,

(iv) notwithstanding anything contained in the Constitution or any law for the time being in force, the general election for constituting a new Legislative Assembly for the said State shall be held as soon as possible".[38]

It has already been observed that opinion was divided on the reasonableness of the President's Proclamation in Kerala. As one Communist member of the Lok Sabha, Easwara Iyer said, "Kerala State had been made the testing ground for the misguided use of the powers contained in Article 356".[39] In his judgment, Article 352 should have been resorted to, for the situation was one of internal disturbance. But such contention could not be accepted, because the disturbance in Kerala reached such a peak that the law and order machinery completely broke down, and hence, the operation of the Article 356 became a necessity Besides, there were several instances of direct violation of the Constitution by the Communist ministry such as discriminating policy of the government not in conformity with rule of law, release of the Communist prisoners convicted of serious charges, etc Citing several specific cases of misgovernment Home Minister Pant observed in the Lok Sabha that *"the majesty of law and rule of law were virtually abrogated"*.[40] Thus the break-down of the law and order machinery in the State and the direct violation of the provisions of the Constitution provided the occasion for the Proclamation by the President. As the Home Minister replying to the Lok Sabha debate said, "No action could be taken simply because there was a movement or an agitation. It was when it had been preceded by acts which amounted to a breach of the provisions of the Constitution and had culminated in a upsurge that such action became altogether

[38] *The Gazette of India (Extraordinary), Part II—Sec 3, July 31, 1959*

[39] *Synopsis of Lok Sabha Debates* (3rd August to 12th September, 1959), p 108

[40] *Op. cit*, p 101

inevitable.."[41] That the President's Proclamation in Kerala was acclaimed by a great majority of the people, was proved by the fact that the resolution approving the Proclamation was adopted by 270 votes to 38 in the Lok Sabha, the vehicle of nation's opinion.

The survey of the President's proclamation of emergency in the States on different occasions serves to spotlight some major facts: (i) In no case there had been any unjustified or intolerant use of Article 356; (ii) the makers of the Constitution wisely provided for central action in case of the failure of constitutional machinery in a State; and (iii) the Centre in each case had tried to stabilise the local political conditions and restore local autonomy by holding an early election

[41] *Ibid, p 120*

CHAPTER VII

WORKING OF UNION-STATE RELATIONS

The operative machinery of a Constitution is not obtained exclusively from the specific provisions of the Constitution Powerful forces, which set the tune of social changes and shape the complex of political prejudices, constantly arise in the social matrix and profoundly condition the working of the Constitution It is these forces operative in India and their impact upon her federal structure, which we shall examine in this chapter.

The urge for accelerated economic growth and extension of social services is the overwhelming social urge in India. Comprehensive planning has been undertaken with a view to giving this urge an articulate expression It is generally believed that federalism suffers most in a system of planning, for planning introduces a powerful centralist direction in Centre-State relations which federalism seeks to prevent[1] The complaint that the operation of Five-year plans has made the country's federal system function in almost a unitary way and has reduced the State autonomy to a marginal phenomenon, is widely held in India.[2]

The Planning Commission, which was set up by the Government of India through a formal resolution in March 1950, constitutes the core of the planning organisation in the country The Commission thus is the creation of the Union Government. The Commission will·

[1] As Karl Loewenstein observes· "Economic planning is the DDT of Federalism" (*Constitutions and Constitutional Trends since World War II*, Ed. Arnold Zurcher, p 212) See also *Federalism and Economic Growth in Underdeveloped Countries*, p 55

[2] See K Santhanam, *Union-State Relations in India*, Ch IV. See also K. V Rao, "Centre-State Relations in Theory and Practice", in IJPSc., October December 1953 Myron Weiner also notes that "though states share with the center the power to regulate industrial relations, develop education and pass legislation in the field of local government, in practice state legislation is almost non-existent (as in the field of industrial relations, where central legislation is followed by most states), or is a mirror of the recommendation of the centre (as in local-government legislation)". *The Politics of Scarcity*, p. 240

"(1) make an assessment of the material, capital and human resources of the country, including technical personnel, and investigate the possibilities of augmenting such of these resources as are found to be deficient in relation to the nation's requirements;

(2) formulate a plan for the most effective and balanced utilisation of the country's resources,

(3) on a determination of the priorities, define the stage in which the plan should be carried out and propose the allocation of resources for the due completion of each stage;

(4) indicate the factors which are tending to retard economic development and determine the conditions which, in view of the current social and political situation, should be established for the successful execution of the plan;

(5) determine the nature of the machinery which will be necessary for securing the successful implementation of each stage of the plan in all its aspects;

(6) appraise from time to time the progress achieved in the execution of each stage of the plan and recommend the adjustments of policy and measures that such appraisal may show to be necessary; and

(7) make such interim or ancillary recommendations as appear to be appropriate on a consideration of the prevailing economic conditions, current policies, measures and development programmes or on an examination of such specific problems as may be referred to it for advice by Central or State governments for facilitating the discharge of the duties assigned to it".[3]

Even a cursory glance at the functions of the Commission would show how a remarkably important role it plays in the making of the nation's economic policies. The Commission, although not endowed with any constitutional or statutory status, has come to assume virtually the role of the architect of India's destiny. Before we discuss how the assumption of this role has affected the Union-State relations in India, it would be useful to examine the composition of the Commission. The Commission has alto-

[3] *Gazette* of India (Extraordinary), March 15, 1950 Sec 4 of the Resolution.

gether twelve members. The Prime Minister is its Chairman, and five of his important colleagues in the Union Council of Ministers are its members, and the Cabinet Secretary is the Secretary to the Commission. Thus the integration of the Union Cabinet and the Commission is almost complete, and this effectively ensures the conjunction of their views

The Commission receives the plans from both the State Governments and the Central Ministries, and reviews them in the light of the availability of the resources and the country's overall needs. Such review leads to necessary modifications of these plans before they are coordinated and integrated by the Commission in the final plan This final plan is submitted to the Parliament for approval The plan as approved by the Parliament is sought to be executed through Central Ministries and the State Governments. In order to adapt a five-year plan to the shifting social and economic situations, it is broken up into a series of annual plans. "Usually, in November and December every year there is a series of consultations between Planning Commission on the one hand and Central Ministers and the States on the other for reviewing the progress of the Five-Year Plan during the previous years, re-assessing the resources and the technical possibilities and formulating an annual plan for the next year".[4]

From the above study of the composition and functions of the Planning Commission, and of the planning process certain reasonable conclusions relevant to Union-State relations can be drawn. First, the composition of the Commission is such that the formulation of a five-year plan or of an annual plan is done largely in the light of the accepted policies and decisions of the Central Government, and hence, a plan comes to reflect predominantly the mind of the Centre As one writer observes, "The power of the Center is so great that at the planning stage agreement will be reached reasonably close to the Center's position".[5] Secondly, the role of the Finance Commission as an umpire in Union-State financial relations has been rendered redundant by the operation

[4] S R Sen, 'Planning Machinery in India' in *The Indian Journal of Public Administration*, Vol. VII, No 3, July September 1961 On the organisation of planning see also P P. Agarwala, 'The Planning Commission' in *The Indian Journal of Public Administration*, Vol III, No 4, October-December 1957.

[5] Wilfred Malenbaum, 'Who Does the Planning' in *Leadership and Political Institution in India* (Ed Park and Tinker), p. 305

of the five-year plans. For, this Commission has no independent role to play as it has to make recommendations on the basis of the needs of the States already ascertained by the Planning Commission while approving the State plans. The Planning Commission virtually forestalls the recommendations of the Finance Commission by determining the quantum of Central assistance to the States for the coming five years. As the Third Finance Commission regretted, "the role of the Finance Commission comes to be, at best, that of an agency to review the forecasts of revenue and expenditure submitted by the States and the acceptance of the revenue element of the plan as indicated by the Planning Commission for determining the quantum of devolution and grants-in-aid to be made; and, at worst, its function is merely to undertake an arithmetical exercise of devolution, based on amounts of assistance for each State already settled by the Planning Commission, to be made under different heads on the basis of certain principles to be prescribed".[6] Thirdly, a consequence of planning is the dilution of fiscal autonomy of the States An annual plan which is framed for the coming year after annual plan discussions is formulated in the light of the Planning Commission's review of the budgetary needs and available resources of the States for the coming year. Consequently, the annual budgets of the States are made on the basis of the plan, that is, each State's budget has to be fitted into the framework of an annual plan as already determined by the Planning Commission. Hence, in so far as the plan outlay in the annual budget is concerned, the States have practically no autonomy.

Although the function of the Planning Commission is merely advisory in nature, its actual role has been more than that. The role has been one of actual control. To give some instances which impinge upon State autonomy, through its Land Reforms Division the Commission examines the States' land reforms schemes before they are introduced in the State legislatures,[7] through its Prohibition Section the work on prohibition in different States is coordinated;[8] the basic principles of local development works programmes

[6] *Report*, p. 35

[7] *The Organisation of the Government of India* (The Indian Institute of Public Administration), p 349

[8] *Ibid.*, p 351

are set by the Commission;[9] specific schemes of development are approved by the Commission. The Planning Commission also supervises the work of plan-implementation, particularly in the States through Advisers (Programme Administration), each of them being assigned a group of States. This catalogue of the powers and functions of the Planning Commission would show that its control over the States is quite large.

In order to secure the support and cooperation of the States for the plan and to ensure uniformity of economic policies all over the country, the Government of India on a suggestion of the Planning Commission set up the National Development Council. The Council is composed of the Prime Minister, Chief Ministers of all the States and the members of the Planning Commission. Its functions are

(1) To review the working of the National Plan from time to time

(2) To consider important questions of social and economic policy affecting national development.

(3) To recommend measures for the achievement of the aims and targets set out in the National Plan, including measures to secure the active participation and cooperation of the people, improve the efficiency of the administrative services, ensure the fullest development of the less advanced regions and sections of the community, and, through sacrifice borne equally by all citizens, build up resources for national development.

In its functioning the Council has developed itself into what K Santhanam calls, "a super-Cabinet of the entire Indian federation, a cabinet functioning for the Government of India and the Governments of all the States".[10] The assumption of this unique position can be attributed to no specific constitutional provision nor to any particular statute, but to the composition of the Council itself Its composition is such that its decisions gain a special sanctity. A review of the work of the Council would show that it is by and large a vital machinery for getting the policy decisions of the Union Cabinet, adopted generally on the suggestions of the

[9] *Ibid*, p 350
[10] *Op cit*, p 47

Planning Commission, accepted by the States. The Council at its periodical meetings takes a number of important decisions which are virtually the decisions of the Union. Some of these directly affect the State sphere delimited by the Constitution. Besides, these are sometimes taken on the spot, and at least the press does not convey any impression that the States have sufficient prior knowledge of many of these decisions We may give some specific instances illustrative of the centralist direction of the Council's decisions. The Council decided in 1957 that an additional central excise duty would be levied on mill-made textiles, sugar and tobacco in substitution for the sales taxes then levied by the State Governments on these products. That was a vital decision in so far as the States were concerned In 1962 the Council accepted a proposal of the Union Finance Minister that the Centre alone would enter the market for loan during the next financial year. In both cases prior to the Council's meetings, the States had practically no knowledge of that proposal At least the Press gave no hint of any such knowledge Even the question of prior knowledge is comparatively unimportant; the significant point is that the National Development Council takes decisions, some of which directly trench upon State autonomy, but generally no major constitutional issue is raised.

It is not only the Planning Commission but almost every Union Ministry which has come to exercise some amount of control in matters which fall within State jurisdiction. The Planning Commission in course of annual plan discussions approves specific schemes for the States in the coming year, and recommends what amount of central assistance should be made for such schemes. The Commission is merely an advisory body. The machinery for the implementation of its recommendations is provided by the various Union Ministries which, while providing the assistance, issue a number of directives to the States. The Planning Commission and the Union government use central assistance as a mighty lever for influencing the priorities in State sector. It is the huge amount of this assistance which is really the source of the authority of the Centre.

In India two types of grants, statutory and discretionary, are provided to the States. While statutory grants are made on the basis of the recommendations of the Finance Commission, discretionary grants are given on the basis of the recommendations

of the Planning Commission. The spread-out between these two types of grants for the year 1960-61 was:

TABLE 1

(*Rupees in Lakhs*)

Statutory Grants		Discretionary Grants ...	11,378
(1) Grants under Article 275 (1) substantive provision ..	3,950		
(2) Grants under the provisos to Article 275 (1)	931		
Total	4,881		

SOURCE Report of the Third Finance Commission

It will be seen that the amount of discretionary grants occupies the much greater proportion of the total grants. It is this huge volume of discretionary grants which provides a vast reservoir of real authority to the Planning Commission and the Union Ministries. Discretionary grants are tied to conditions which are utilized by the Centre to ensure the fulfilment of national priorities in the plan which is considered necessary for uniform progress of the country. Many schemes undertaken in pursuance of the plan fall within the constitutionally delimited sphere of the States, and hence it is not possible for the Centre "to require the States to execute the programme in any particular manner". "The only way it can do so is by providing that at least for that part of the programme which is considered to be of national importance, the States are given a financial inducement in the shape of tied grants to undertake and implement these schemes".[11] Thus it is through conditional grants that the Centre considerably influences priorities in the State sector, and consequently State autonomy is to some extent whittled down. We give an instance. Medical education is a State subject, and every State maintains a number of medical colleges, admission to which is governed by principles as determined by the State authorities. The Centre has no constitutional authority to make the State governments admit students in these institutions in a particular way. But although devoid of constitutional power the Centre

[11] *Third Finance Commission's Report* (Kamath's note of dissent), p 56

can, through use of conditional grants, realise this objective. Recently the Union Health Ministry accepted the Mudaliar Committee's recommendation that merit should be the only guiding principle for selection for medical colleges, and decided that grants to the States would be conditional on the acceptance of this principle.[12] We do not doubt the wisdom of this decision. We cite this instance only to show how the conditional grants are utilised to compel the States to toe the line of the Centre on a policy-matter which is entirely within the State sphere

One type of conditional grants is what is known as matching grants. Under this system central assistance is conditional upon a State contributing a certain proportion of the total cost of a particular scheme. Some of the development schemes under the plans in India are financed according to the principle of matching grants. To cite an instance, water supply and sanitation scheme for rural areas is a programme in which the Union government makes a grant of 50% of the cost on the condition that the State government would provide the other half Schemes involving matching grants are not in principle objectionable What is wrong with them is that the States in India, most of which possess very meagre resources, are, while accepting these schemes, compelled to run into highly distressing situations For fear of public criticism the States cannot reject the schemes involving matching grants; at the same time, their meagre resources do not allow them to meet their share of cost.[13] To remedy it the States pursue certain financial policies which are politically inexpedient and economically unwise, and consequently, they are dragged into a vicious circle We may mention in this connection the recent case of the State of Uttar Pradesh The Government of U P. felt that a number of the development schemes under the third plan could not be undertaken, as, with its existing resources, it could not meet its share of the expenditure This compelled the State government to introduce at the suggestion of the Planning Commission a bill to enhance the tax on land holdings with a view to augmenting its resources But it aroused tremendous discontent among the people as a result of which a serious crisis overtook the Government of U.P.[14] The purpose of citing

[12] *The Statesman*, October 13, 1962
[13] *Report of the Second Finance Commission*, p. 68
[14] *The Statesman*, September 8, 17 and 27, 1962

this case is to show how the Planning Commission's insistence on making the central assistance contingent upon the State raising its share of resources for financing the development schemes included in the State sector, can virtually dictate a State to pursue a particular economic policy, although the State itself does not like it Naturally the State autonomy under the circumstances comes to be sliced off.

The crucial question related to Union-State relations in India in the context of planning is: Can a State refuse to obey the directives of the Planning Commission or of the Union Ministries on a matter in the State list? Or, can a State pursue a development scheme which has not been sanctioned by the Planning Commission? From the constitutional point of view the State can, for the State's power in matters in the State list is, subject to certain constitutional limitations, supreme and unlimited But in that case the State must be prepared to suffer the consequence of non-compliance with the directives of the Centre, and the consequence is stoppage of all central assistance But it is obvious that no State would generally venture to take such a risk The Centre has a monopoly of almost all the elastic and productive sources of income with the result that the States possess comparatively inadequate and static resources But a large number of social welfare functions are in the State list, and under the pressure of the democratic public opinion these functions have to be undertaken. Inevitably a huge gap is created between the volume of State functions and the volume of State resources, and this gap can be bridged only if adequate assistance is provided by the Centre We analyse in the following table the resources position of the States under three successive five-year plans:

TABLE 2

(in crores of rupees)

	(1) *Size of the State Plan*	(2) *Total State Resources*	(3) *Gap in Resources*	(4) *Central Assistance*
First Five-Year Plan	897	499	398	350
Second Five-Year Plan	*1,906*	*774*	*1,132*	*1,038*
Third Five-Year Plan	*3,847*	*1,462*	*2,385*	*2 375*

SOURCE *Review of the First Five-Year Plan*, 1957, p 24, *India* (1961), p 106 and *Third Five-Year Plan*, p. 102

The above table shows how wide the gap in States' resources is under all the three plans, and with the successive enlargement of the five-year plans the gap appears to widen more and more It is the continuous flow of sufficient central assistance which helps the States in closing the gap in resources for executing their plans. That is, the Centre virtually underwrites the fulfilment of the State plans. And money from the Centre inevitably brings with it certain strings which involve some abridgement of State autonomy.

The extent to which centralist direction has emerged in Indian federalism under the impact of planning can be shown by an examination of some sectors of development We take Industrial Development and Education as cases for our present study

Let us first of all see what is exactly the constitutional position of the Centre and States in relation to industrial development. Industries subject to entries 7 and 52 of List I are a State subject (entry 24 of List II). Under entry 7 of List I the Union's power extends to industries "declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war", and under entry 52 the Union's jurisdiction extends to "industries the control of which by the Union is declared by Parliament by law to be expedient in the public interest". Entry 52 is a source of vast power for the Centre in the sphere of industrial development. In pursuance of this provision the Parliament passed the Industries (Development and Regulation) Act in 1951. Although originally the Act covered 37 industries, at present altogether 79 industries fall within the purview of the Act. This extension of the scope of the Act can be ascribed to the fact of increasing central regulation of industrial development under the plans. Under the Act no new unit or expansion of capacity in the industries can be undertaken without prior sanction of the Union government, and the Union government is authorised to investigate into the affairs, and take over the management, of any industrial undertaking which fails to carry out the instructions of the Union government. Thus the Act is designed to bring industrial development within the tight mould of central regulation

Apart from such statutory authority the Centre's control over the sector of industrial development mainly stems from two sources: (1) the necessity of submission of all specific schemes of industrial development for the sanction of the Planning Commission; and (2) the possession by the Centre of vast resources,

and large financial dependence of the States upon the Centre. Whenever the States submit schemes for establishment of heavy industrial units to the Planning Commission, with few exceptions they are disapproved, for the Commission finds it desirable in the interest of the overall needs of industrial planning to leave heavy industries entirely in the hands of the Centre. No State government would like to take the risk of pursuing any such scheme rejected by the Planning Commission, for that would eventually lead to stoppage of all central assistance to that State.

Although the States do not participate in the development of heavy industries, they initiate and implement the great majority of schemes of village and small industries. As Harry J. Friedman observes, "The distribution of responsibility for heavy and small-scale industries between the Centre and the States is the major division of the governmental powers in India's Industrial development".[15] But even in the field of village and small industries the States do not possess absolute autonomy. The Centre provides the general direction in the interest of the need for uniformity which a national plan always entails. Every scheme sponsored by a State is examined by some All-India Board[16] before it is finally approved by the Central government. "In implementing village and small industries programmes the common procedure is for proposals of States to be scrutinised by the all India Boards concerned before they are approved by the Central Government".[17] This dominating position of the Centre can be ascribed to the fact that most of the finance for implementing the village and small industries development schemes is provided by the Centre.

Education provides a second case-study. Under the Constitution the development of education is largely the responsibility of the States. Education including universities, subject to the provisions of entries 63, 64, 65 and 66 of List I, is a State subject (entry 11 of List II) Under these provisions the Union Government maintains and directly regulates central universities and a number of central institutions set up for the development of special studies, and carries out its constitutional responsibility for "coordination

[15] 'Indian Federalism and Industrial Development' in *Far Eastern Survey*, March, 1958

[16] A network of such Boards like All India Handicrafts Board, All-India Handloom Board etc has been set up by the Centre.

[17] *Second Five Year Plan*, p. 443

and determination of standards in institutions for higher education". But notwithstanding the fact that the Constitution assigns the major responsibility for education to the States, it is interesting to find that under the spurt of development and planning the dominating influence of the Centre is pervasive over all stages of education.

For the convenience of our study[18] we may break up the field of education broadly into three stages, viz, primary education, secondary education, and higher education

Primary Education· The Panel on Education of the Planning Commission considered the question of splitting up the period for providing free and compulsory education to all children up to the age of 14 years under Art 45 of the Constitution, and recommended that the first stage of providing education to children in the age group of 6-11 should be fully covered by 1965-66. This recommendation was endorsed by the Union government and was subsequently accepted by the State Education Ministers' Conference in September, 1957. Not only was the recommendation made by the Planning Commission, but also all the schemes undertaken for the implementation of the recommendation were centrally sponsored. Besides, the scheme for expanding girls' education in the primary stage introduced in 1957-58 was also sponsored by the Centre, and the proposal for the improvement in basic salary of the primary teachers which was accepted by almost all State governments although quite hesitatingly because of financial implications involved, came from the Centre The extent of the Centre's commanding position in this field could be better gauged by the fact that the ministry of education made a model legislation on compulsory primary education and instructed the States in 1960 to reorient their laws on primary education in the light of this model legislation.

Secondary Education: In recent times there has been almost complete overhauling of the pattern of secondary education, but here also, although a State field, the leadership has rested with the Centre. The government of India, on the basis of the recommendations of the Secondary Education Commission, chalked out a programme for the reorganisation and rejuvenation of secondary

[18] All information relating to this study is obtained from *Report* (Ministry of Education), 1958-59, 1959 60, 1960 61 and *A Review of Education in India* (Ministry of Education), 1947-61

education The principal items of the programme are: (a) Conversion of High Schools into Higher Secondary Schools; (b) development of multipurpose schools with diversified courses; (c) elevating the level of science teaching; and (4) improvement of salary and *training of secondary teachers All the State Governments have* accepted this programme.

Higher Education: The most significant development in this field has been the introduction of the three-year degree course which was also initiated by the Centre. This Central Advisory Board of Education, of which the Union Minister of Education is the Chairman, at its meeting held in 1956, recommended a course of three years of university education leading to the first degree, and it was subsequently endorsed by a conference of the education ministers of the States.

It is evident that the basic decisions regarding development of education are taken by the Union, although education by and large is a State subject. All the schemes initiated by the Centre *are not willingly endorsed by the States. Some of these are no* doubt resented But ultimately the States in most cases have to give way under central pressure which *is essentially financial* pressure We cite a few schemes introduced during the second plan period to show how a large part of finance is provided by the Centre for the development of education. The qantum of central assistance for each such scheme was as follows:

(*i*) Primary Education Expansion Scheme (100%)
(*ii*) Girls' Primary Education Expansion Scheme (75%)
(*iii*) Improvement in the Salary Scales of Secondary School Teachers (50%)
(*iv*) Improvement in the Salary Scales of College Teachers (50%)

Our examination of the two important fields of development reveals the extent to which centralised tendencies have been generated in Indian federalism by the operation of a national plan. *A common plan imposes a certain measure of uniformity, and in* consequence, much of the dividing line between Union and State *spheres in the Constitution comes in practice to be blurred. As* Tarlok Singh observes, "National *Planning, while proceeding to* a large extent *through consultation, yet widens the role of the* central government and tends to reduce the distinction between

Committee "for the purpose of regulating and co ordinating Parliamentary activities of the Congress Legislature Parties".[22] The central control over the State governments at party level is ensured through Working Committee and Parliamentary Board, particularly the former. Before we examine the extent of central control exercised through party mechanism, it is useful to have a glance at the composition of the Working Committee. Formerly the party constitution contained a rule that not more than one-third of the members of the Working Committee should be ministers, but it was removed in September, 1952. Its consequence has been heavy congregation of the ministers in the Working Committee In the present Working Committee, for instance, as many as eight members of the Union Council of Ministers[23] have been included Hence, the Working Committee is essentially an adjunct to the central government

The party resolutions which command the Congress governments in the States to pursue certain policies, are practically those which have been passed by the Working Committee,[24] and obviously, they reflect the thinking of the central government. Hence, the norms for action by the Congress governments in the States are largely set by the Working Committee The basic policies are evolved at the top of the Party organisation which are passed on to the State governments for elaboration and implementation.[25] Take, for instance, the resolution on land reforms passed by the Congress at its Nagpur Session in 1959 The resolution enjoined the Congress governments in the States to set up village panchayats and village cooperatives to organise service cooperatives, and to fix ceilings on existing and future landholdings through appropriate legislation. But this land reforms policy did not emanate from initiative of the State units in the Party; it was evolved by the Congress High Command.

[22] *Constitution*, ibid, Article XXVII

[23] They are Patil, Sanjivayya, Shastri, Nanda, Reddi, Chavan, Mrs Gandhi, Ram Subhag Singh

[24] The approval of the All India Congress Committee or of the general body of delegates at annual Congress session is only formal, for it is almost impossible for them to reject any resolution which has been approved by the Congress High Command See N V. Gadgil, 'The Government and the Party', *Indian Journal of Public Administration*, Vol. III, No. 4, October-December, 1957

[25] K. Santhanam, *op. cit*, p. 63

Another party organ which facilitates central control is the Parliamentary Board[26] to which a reference has already been made. It instructs the leaders of the Congress legislative parties in the States on the composition of the State cabinets, and has power to reject any name sent by a State Chief Minister for inclusion in his Cabinet, as it did recently in the case of Maqbool Ahmed who was sought by the Chief Minister of Bihar to be included in his cabinet.[27] As an instance of powerful central intervention through the Parliamentary Board, we may recall the "Katju episode" in Madhya Pradesh In 1957 after the death of Chief Minister Shukla, K. N Katju, a stranger to Madhya Pradesh politics and a Union Minister at the time, "was ushered in as Chief Minister of Madhya Pradesh under central direction"[28]

We have analysed the centralising forces in operation in Indian federalism. But these are challenged, although not continuously but intermittently, by certain decentralising forces which guarantee substantial State autonomy, and put a brake to the process of total integration which has been set in motion in India by the powerful "Triple" i.e., national plan, massive grants and party One such decentralising force is what K. C Wheare calls, "the self-consciousness and self-assertiveness of the regional governments"[29] which is slowly but perceptibly increasing in India It is true that owing to strong party pressure this awareness of autonomous status and existence remains frequently dormant, and cannot become as articulate and vocal as that of Western Australia or Quebec. But at times when the Centre decides to make a major and direct assault on State autonomy, or tries to encroach upon what the States believe really belongs to them, the State consciousness transcends the rigidity of party loyalty, and becomes enormously active to challenge the Centre's intervention And this sense of State rights gains more in strength whenever a powerful local leadership arises to give the resentment of a State a thrust and a focus.

We may give some recent instances with a view to substantia

[26] The composition of the Board shows it to be an adjunct to the central government Out of its eight members, four are members of the Union Cabinet (Shastri, Mrs. Gandhi, Patil and Chavan)

[27] *The Statesman*, June 28, 1962

[28] S C. Gangal, "An Approach to Indian Federalism *Political Science Quarterly*, June, 1962

[29] *Federal Government*, p. 256

ting our contention. In the conference of the State education ministers held on October 18, 1962, the Union minister of education, in pursuance of the recommendation by the Sampuranand Committee on emotional integration, made a proposal to evolve a national educational policy and establish a separate central machinery to implement it. But the proposal was vehemently opposed by the State Ministers on the ground that education was in the State list over which the States had complete control. The feeling against the proposal was so strong that it was finally decided to shelve it [10] Another instance is provided by the Centre-West Bengal conflict over the competence of the Parliament to enact the Coal Bearing Areas (Acquisition and Development) Act, 1957, which authorises the Centre to acquire land vested in the States Common party loyalty could not prevent the filing of a suit by West Bengal against the Union of India in the Supreme Court. The Centre subsequently tried to soften the feeling of West Bengal by agreeing to the State's coal mining project. But the awareness of the State rights was so powerful that even this attitude of the Centre failed to make the State government withdraw the case then pending in the Court. Moreover, all the States with the solitary exception of Bihar which appeared before the Court in pursuance of the Court's notices, lent their support to the point of view of West Bengal Although the Court decided in favour of the Centre, the whole episode illustrates an important fact: a large measure of 'self-consciousness and self-assertiveness' of the State governments obtains in India

Another centrifugal force in operation is provided by the prospect of formation of coalition or opposition governments in some of the States. Although the Congress Party at present is in power in all the States, the above possibility cannot be ruled out, for actually in the immediate past these existed in a number of States. The Communist government in Kerala, the Congress-Ganatantra Parishad, and the Congress-P.S P coalition governments in Orissa and Kerala respectively are instances to the point. The possibility of some opposition or coalition ministry being formed in a State always puts every State government on guard against central encroachment, goads it to assert itself against New Delhi. For, too much of toeing the line of Centre may lead to surrender of local interests and distinctiveness, and this will generate wide-

[10] *The Statesman*, October 19, 1962

spread local resentment. The opposition will seize the opportunity for organising popular upsurge with a view to discrediting the existing State government and finally coming to power. In ultimate analysis, a State government is sustained by local support and not by central blessing, and hence it will not pursue a policy of integration with the Centre to that extent where there is a risk of the electorate being alienated Party pressure in a one-party, totalitarian system as in the U.S.S.R. no doubt results in complete blurring of the distinction of central and regional spheres, and total integration of the units with the Centre. But in a multi-party *democratic system as in India where the possibility of some* opposition party coming to power in a State is always present, no State government will rush into a policy of complete integration with the Centre leading to virtual abnegation of state autonomy. It is the power of the electorate, conscious of local interest and distinctiveness, to freely choose a government that exerts a strong decentralising influence in the working of Indian federation The withdrawal of the West Bengal-Bihar merger proposal in 1956 which was forced by a decisive anti-merger verdict by the electorate of Calcutta North-West Parliamentary constituency, is an instance to the point, and reveals the strength of the centrifugal force as against the centripetal direction.

But the most powerful centrifugal force in India is provided by linguistic pressures. The conflict of linguistic regionalism with the Centre and its final victory constitute a revealing chapter of Indian federalism which shows that at *times centripetal force has* to give way to centrifugal pressure. As F G Carnell observes, "as the recent states reorganisation suggests, the Centre cannot always triumph. At the very time when the Planning Commission would have liked to reduce India to a unitary character with five enormous provinces, coinciding with 'nodal' economic regions served by river valley projects and other schemes which completely cut across state boundaries, linguistic regionalism was powerful enough to insist on a states reorganization which was purely tribal in its approach to social, economic and political problems".[31]

The Congress at its 1920 session officially accepted the principle of redistribution of Provinces on a linguistic basis, and at different times reaffirmed its faith in the principle. But soon after the

[31] *Federalism and Economic Growth in Underdeveloped Countries*, pp. 55-56

attainment of independence when the question of implementing the principle arose, the top leaders of the Congress felt that strict adherence to the principle was not possible as it might create *fissiparous tendencies and jeopardize national unity. Besides, it* was felt that the time was not opportune for immediate redistribution of Provinces, as the country then was pre-occupied with a host of pressing problems However, a Commission known as the Dar Commission was constituted on the recommendation of the Drafting Committee of the Constituent Assembly to consider the question of redistribution, and the Commission felt that in re-constituting the Provinces primarily the accent should be laid on administrative convenience This sort of approach created hostile reactions all over the country, particularly in the South. The Congress then appointed a three-member committee, consisting of Jawaharlal Nehru, Vallabhbhai Patel and Pattavi Sitaramayya, "to examine the question in the light of the decisions taken by the Congress in the past and the requirements of the existing situation" The Committee, known as the J. V. P Committee, warned against the disruptive implications of the linguistic principle, and felt that unity, security and economic prosperity must be the primary considerations But the Committee conceded that the case of overwhelming popular sentiment for reorganisation of States along linguistic lines might be examined, provided the principle could be "applied only to well-defined areas about which there was mutual agreement", and felt that to start with, the case of creation of a separate Andhra State could be taken up

Meantime the popular sentiment in favour of re-distribution of States along linguistic lines came to be organised, particularly in Andhra, and soon an intense popular movement developed. The formation of a separate Andhra State was, however, delayed by lack of agreement among the people of Madras State in regard to some matters. But soon a tragic event occured which hastened the formation of the Andhra State Potti Sriramulu, the veteran Andhra patriot, died on December 16, 1952 after 58 days of fast. The government sensed the danger, and soon announced its decision to constitute a separate Andhra State "consisting of the Telegu speaking areas of the present Madras State, but not including the city of Madras".

The concession to the Andhra demand gave a powerful impetus

to the linguistic forces in other parts of the country, and linguistic pressures all over the country began to mount at an alarming speed from 1953. Soon the government was compelled to set up a States Reorganisation Commission to examine the issue and make recommendations in a comprehensive manner. The Commission felt the necessity of a "balanced approach to the whole problem in the interests of national unity", as it was not proper "to reorganise States on the basis of the single test of language"[32] The publication of the Commission's report,[33] however, created a powerful wave of popular passions, particularly in Bombay where a bi-lingual formula had been recommended. Linguistic riots broke up, menacing the very basis of national unity, and dangerously straining party discipline within the Congress

The Congress Working Committee endorsed the Commission's recommendations, but in regard to Bombay it proposed a three-State formula under which this State would be divided into Maharashtra, Gujarat and Bombay city This recommendation was resented with vehemence by the Maharashtrians who were unwilling to lose Bombay. But it remained the official policy even when the States Reorganisation Bill was at the committee stage. Events moved swiftly Ultimately through a process of political moves and counter-moves it was agreed to have a bilingual Bombay, with the Marathi speaking areas of Vidarbha added to it as a concession to the Maharashtrians

A lot of bitter feeling developed also between Bihar and West Bengal over the Commission's recommendations in regard to the disputed areas The Chief Ministers of these two States, with a view to stemming the rising tide of factionalism and inter-State discord, made a proposal for merger of Bihar and West Bengal. But the linguistic pressure was so powerful that it had to be finally dropped.

The Centre had to bow down to the centrifugal pressures of linguistic regionalism. The States Reorganisation Act recast and reorganised India into fourteen States largely along linguistic lines, each, with the exceptions of Bombay and Punjab, being characterised by a clear dominance of a particular language. But

[32] *Report* (1955), pp. 45-46

[33] Regarding Commission's proposals for reorganisation, see Part III of the *Report*

in Bombay, where the whole climate was charged with linguistic passions, the bilingual experiment was short-lived, and ended in a sad failure. Ultimately it was decided to bifurcate Bombay into Maharashtra and Gujarat which emerged as separate States on May 1, 1960[34]

We have discussed the movement for linguistic States[35] in some detail in order to show "the strength of regional as against national loyalties"[36] The call to national unity and party solidarity was virtually drowned in the loud voice of linguism The reorganisation of the States on a unilingual basis has not only revealed the massive strength and vitality of linguistic regionalism, but has also released certain forces in the direction of deepening the regional awareness First, the States, reconstituted on the basis of linguistic unity, have grown into homogeneous and compact units where emotional response becomes easy, spontaneous, and integrated. Consequently, the sense of State rights, the self-consciousness and self-assertiveness of the regions have gained in intensity and endurance[37] Secondly, the reorganisation of the States along linguistic lines has encouraged the growth of powerful local political forces whose vision is essentially primitive, and naturally they work in the direction of extracting the maximum spoils of development for their so-called "home lands", being quite oblivious of the overall needs of the nation. Both the forces confront the centralising pressures like plan and party as close rivals.

[34] At present Punjab is the only State where bilingual truce obtains. But it is essentially an uneasy truce. The national integration which followed Chinese aggression had for some time put off the movement for the creation of 'Punjabi Suba' on a linguistic basis, but this demand of the Sikhs has not died down The Akali leader Sant Fateh Singh reiterated that 'the issue of Punjab Suba was a question of life and death for the Sikhs and it would have to be solved' (*The Statesman*, February 17, 1953). Again, very recently Sant Fateh Singh decided to fast unto death to press the demand for a Punjabi Suba In view of massive aggression upon India by Pakistan the fast is postponed for the present. (*The Statesman*, September 10, 1965)

[35] On this subject, see, for detailed discussion, Joan V Bondurant, *Regionalism versus Provincialism*, pp 21-54 and pp. 71 104 See also N C. Roy, *Federalism and Linguistic States* Ch. XII

[36] N D Palmer, *The Indian Political System*, p 108

[37] As H. Tinker observes, "The effect of the reorganisation was to give State politics a more intensely regional character, and to make the States a much more important level of power". *India and Pakistan*, p. 134

The episode of linguism encouraged national introspection, and highlighted the need for resisting and containing the separatist forces let loose by the movement for linguistic States, and for fostering a temper of inter-level co-operation in the field of social and economic planning. The necessity was particularly felt at the Centre, and Nehru came out with an idea The idea was to bring the States into some administrative zones for co-operative work. As Nehru observed in the Lok Sabha in course of his speech on the Report of the States Reorganisation Commission, " . . . the more I have thought about it, the more I have been attracted to something which I used to reject seriously . . . That is the division of India into four, five or six major groups regardless of language . . . We may have what I would call Zonal councils, i.e., a group of 3, 4 or 5 States, as the case may be, having a common council" [38] The formation of these Council, as Nehru felt, would be helpful in implementing the schemes and plans and in developing 'the habit of co-operative working' among the States. The whole of the nation responded quite favourably to this idea. Finally, the States Reorganisation Act gave a concrete expression to the idea by providing for the establishment of five Zonal Councils.[39]

India has been divided into five zones which are as follows:

(*a*) Northern Zone: Punjab, Rajasthan, Jammu and Kashmir, Delhi and Himachal Pradesh.
(*b*) Central Zone: Uttar Pradesh and Madhya Pradesh
(*c*) Eastern Zone: Bihar, West Bengal, Orissa, Assam, Manipur and Tripura.[40]
(*d*) Western Zone: Bombay and Mysore.
(*e*) Southern Zone: Andhra, Madras and Kerala

The Zonal Council for each zone is by convention presided over

[38] *Lok Sabha Debates*, Vol X, 3513-4 It may be observed here that this idea is not a new one. Sir Sikandar's plan for grouping the Provinces and the States into 7 Zones or Regions, and the Civilian Yeatts's scheme of regional delimitation by river basins may be recalled. See R. Coupland, *The Future of India* (Report on the Constitutional Problem in India), Part III, Ch. X

[39] *Part III of the Act deals with 'Zones and Zonal Councils'. See India Code*, Vol. II, Part IV

[40] The recently formed new State, Nagaland, has joined this Zone

by the Union Home Minister, and three ministers of each State including the Chief Minister are its members. The Chief Ministers of the States function as Vice-Chairmen of the Council by rotation, each holding office for a period of one year at a time. Each of the Chief Secretaries of the States becomes the Secretary of the Zonal Council by rotation, and occupies the office for one year at a time. Each of the Zonal Councils has the following persons as advisers who help the Council in performing its functions

(*a*) One person nominated by the Planning Commission
(*b*) The Chief Secretary to the government of each of the States included in the Zone
(*c*) The development Commissioner or any other officer nominated by the Government of each of the States included in the Zone

These advisers are competent to participate in the Council's deliberations, but have no voting rights. Each Zonal Council meets at such time as its Chairman determines. The Act also provides for interzonal meetings. Each Council has a central office, the administrative expences of which are borne by the Union government out of monies sanctioned by Parliament.[41]

The Zonal councils are advisory bodies with authority to make recommendations in regard to matters of inter-State or Union-State concern. The Act under whose authority the Councils originated, describes their functions. Each Council is competent to discuss any matter in which the States *inter se* or the Union and one or more of the States are jointly involved, and to advise the governments involved on the course of action to be taken on such matters. But the specific functions of the Councils, which the Act clearly lays down, underline their real significance. Each Zonal Council is authorised to discuss and make recommendations with regard to,—

(*a*) any matter of common interest in the field of economic and social planning,
(*b*) any matter concerning border disputes, linguistic minorities or inter-State transport; and

[41] *States Reorganisation Act*, Sections 16, 19 and 20

(c) any matter connected with, or arising out of, the reorganisation of the States.[42]

The Zonal Councils started functioning from the middle of 1957,[43] and since then they have been regularly meeting While opening the first meeting of the Northern Zonal Council on April 23, 1957, the Union Home Minister, G. B. Pant, spelled out. in clear terms, the principal objectives of the zonal device

(1) to attain an emotional integration of the country;
(2) to help in arresting the acute regional consciousness and all divisive trends,
(3) to assist whenever necessary in eliminating the after-effects of separation,
(4) to enable the Centre and the States to cooperate and to evolve uniform policies in social and economic matters;
(5) to help effective implementation of the development projects; and
(6) to secure some sort of political equilibrium between different regions.

It will be evident that these objectives are not mutually exclusive, but closely interdependent For instance, political tension between regions cannot be eliminated unless there is successful execution of the plans which demands increasing cooperation between the Centre and the States and between the States Inter-regional political equilibrium is largely the consequence of inter-regional economic balance

In assessing the working of the zonal system two facts must be considered: first, the period during which it has functioned is too short to bring out its utility to the full, and secondly, one cannot expect marvels from its operation, simply because the Zonal Councils are essentially advisory bodies, and hence lack mandatory power. But a review of the activities of the Councils would show that this device has proved itself to be a significant accompaniment to cooperative federalism As the Councils have been effective in implementing the Centre's food policy and three-

[42] *States Reorganisation Act*, Sec 21

[43] See Bondurant, *op cit*, pp 128-45 for an elaborate discussion of the first round of the 'Zonal Councils in action'

language formula in each State, so increasing technical and administrative cooperation among the States of each zone has been secured through the Zonal system. The development of the rice zones with the power of the Centre to procure surplus rice from it, the coordinated development of irrigation and power resources in each zone, the cooperation between the States of U P. and M P. in tackling the alarming dacoity problem in the area, the establishment of a common police reserve force in each zone, coordinated development of inte-State transport, and above all, the supply of doctors and engineers to the States in need by the relatively developed States in a zone,[44] are no mean achievements Thus the Zonal system has facilitated cooperation at two levels: between Centre and the States, and between the States. It would be reasonable to conclude that the Zonal Council has been "a most useful device in the development of cooperative federalism".[45]

The spirit of 'cooperative federalism' is pervasive not only in the Zonal system, but also in almost the whole of the operative machinery of the Union-State relations in India Central control as an accompaniment of national planning is no doubt visibly present, but it has only been in the direction of laying down the broad policies and targets of development in the interest of uniform progress of the country Moreover, such central control has largely been by consent and agreement At every phase of the planning the 'working partnership' between the Centre and the States is the characteristic feature Take the planning process. The Planning Commission first of all prepares a draft outline of a five-year plan The States prepare their own plans considering the board targets suggested in the draft. Then discussions take p'ace between the Planning Commission and the States, and in the light of these discussions the final State plans are formulated. Naturally, in the final stage the Planning Commission makes *necessary adjustments and modifications in the State plans, fitting*

[44] For instance, at its Shillong meeting held on February 9 and 10, 1963, the Eastern Zonal Council decided to provide large technical assistance to the new State of Nagaland (*The Statesman*, February 10 and 11, 1963)

[45] Morris Jones expressed this hope in an article 'Recent Political Developments in India' in *Parliamentary Affairs*, Vol XI, 1957-58 For a somewhat different attitude, see Benjamin N Schoenfeld, *Federalism in India* (pp 17-18) Schoenfeld finds that the principal role of the Zonal Councils "has been to carry out the program of the centre in a given policy developed in the nation's capital"

them in the broad framework of national po'icies and priorities. It is thus evident that the planning process in India is largely decentralised,[46] and "from the standpoint of opportunity for initiative at the state level", one is "favourably impressed by the extent to which the state governments in India participate in the planning process".[47] Recently, the Planning Commission has taken a vital decision in the direction of further decentralising the planning process. Hitherto, the State representatives had to go to Delhi whenever a State required the sanction or advice of the Commission The Commission has recently decided that "the direction of the traffic should be reversed, and its Deputy Chairman and top officials should visit State capitals periodically to settle outstanding issues" [48]

We may also consider the implementation stage of planning A large number of important schemes in the five-year plans are in the sphere of the States, and hence, adequate cooperation of the States is necessary for the successful execution of the plans [49] But the States lack sufficient resources for financing their schemes and projects. The Centre supplements the State resources in a big way, and thus lends its financial cooperation in the task of implementing the schemes in the State sector of the plans. Thus the ethos of the planning system in India is one of inter-level cooperation No better description of this characteristic spirit of planning in India can be given than in the words of the Planning Commission's former distinguished Vice-Chairman, V T Krishnamachari: "Many vital parts of the Plan lie in the sphere of the States. The Centre can assist in various ways, but, within the framework of the National Plan, the main responsibility for

[46] Bert F. Hoselitz, "Levels of Administrative Centralization in Economic Development" in *Indian Journal of Public Administration*, 1959, Vol. V, No. 1. As Hoselitz comments, "A large part of each five year plan in India has been drawn up in a fairly decentralised fashion" p 63

[47] Macmahon, *Delegation and Autonomy*, p 70

[48] *The Statesman*, February 9, 1963

[49] One may argue that the Centre has not to considerably depend upon the States for the implementation of the plans as the principal officers in the States charged with the duty of executing the plans, are all drawn from *All India services. But this argument is not tenable for, as Merrill R.* Goodall shows, in practice these officers are dependent more upon the State Ministries than upon the Centre for guidance on development issues See 'Organization of Administrative Leadership in the Five Year Plans' in Park and Tinker, *op. cit.*, p. 326

increasing agricultural production, transforming the social and economic life of the villages by building from below and organising public support and enthusiasm for the plan, rests with the States The p'an is a joint national enterprise in which the Centre and the States are partners, united in a common purpose and working with agreed policies in different fields of national development".[50]

A five year plan in India "lays down the main parameters and fixes the broad targets" within which the States have ample autonomy in programming and execution[51] In the interest of integrated national progress the Planning Commission and the various Union Ministries only set the tune of planning and determine the principal norms of development. Thus we can say that planning in India is a cooperative enterprise in which the basic norms of development are set by Centre in discussion with the States, a large amount of finance is provided by the Centre, and the main administrative machinery is supplied by the States

Inter-level cooperation in different fie'ds has been the most significant aspect of Indian federalism An instance of coopera-tion of the States with the Centre in the field of legislation is provided by the Estates Duty Act, 1953. Many of the State legislatures, through formal resolutions, consented to empower the Parliament to legislate in regard to levy of succession duty on agricultural land which under the Constitution is a State subject

Administrative cooperation on a wide scale is a remarkable development in the operation of Indian federalism Some instances may be given here For execution of land reclamation and development schemes under the p'ans the Central and State tractor organisations function in close cooperation; the Central inspectors help the State inspectors in enforcing the provisions of the Drugs Act, the Union and State organisations work in a spirit of harmony in carrying out the Community Development programmes, and above all, the State planning departments and the Central Planning Commission work in a spirit of maximum cooperation for a'l-round development of the country.

Another fruitful line of cooperation in India has been in the direction of utilisation of the water resources of the country For

[50] *Five Year Plan* (Progress Report), 1953, p 11
[51] S R Sen, *op cit*

instance, the Damodar Valley scheme is a joint endeavour in which the Centre, and the States of West Bengal and Bihar are involved A number of policy-making and supervisory Control Boards, in which both the central and the State governments concerned are represented, have been set up for big river valley projects such as Bhakra-Nangal, Chambal, Nagarjuna-sagar etc.[52] In order to facilitate inter-State cooperation for "integrated and economic development of water resources", the formation of river boards, under the River Boards Act, 1956, is being speeded up in consultation with the States Under the Act, the central government may, on a request from a State or otherwise, set up a river board for advising the States concerned in respect of regulation or development of each inter State river or river valley or in relation to coordination of their activities [53]

'Informational cooperation' is also developing in India The preliminary studies conducted by the Central Water and Power Commission for suitable project sites in the river basins which provide information on the subject are made available to the States to supplement their work in making master plans for irrigation. Similarly, the All-India Educational Survey undertaken in the period 1957-59 helps the States by supplying reliable data and information regarding geographical distribution of educational institutions in programming for a balanced dissemination of educational facilities.

A major development has taken place in the field of financial cooperation. We have already seen the extent of the Centre's participation in financing a large number of development projects in the State sector. This financial assistance to the States entails no doubt a certain amount of central control : but it also reveals a sincere desire on the part of the Centre to help the States in fulfilling their responsibilities. The States are endowed with inadequate resources. Hence many of the welfare functions of the States would suffer in both quality and quantity, and some would remain unrealised, unless large financial cooperation comes from the Centre.

The Indian federation has also evolved conference techniques facilitating smooth Union-State relations and inter-level cooperation. Periodical conferences between the representatives of the

[52] *Third Five-Year Plan*, p. 395

[53] Sections 4 (1) and 13 of the Act, *India Code*, Vol. IV, Part I

Union and the States have become a regular feature of the operative machinery of Indian federalism.

A federal Constitution seeks to delimit the spheres of both Centre and the States. But, in a country dedicated to the welfare state ideal, their jurisdictional exclusiveness tends to be in practice largely blurred by the emergence of a host of problems whose solutions demand joint decisions and cooperative endeavours. The conference devices are designed to secure solution of these problems through discussion and cooperation. As a foreign observer comments, "They seek to provide a forum for discussion of mutual problems and set the stages for the cooperative solution of these problems".[54]

One would come across a stream of regular conferences in India conferences of the State Governors, meetings of the State Chief Ministers, State Ministers' conferences and meetings of the Union and State officials. In each of the conferences some representatives of the Union provide the necessary guidance and leadership The Governors' conferences generally end with a review of the country's political and economic situation The Governors are constitutional heads of the States, and naturally, they cannot adopt any policy decisions. But such meetings have a distinct value: they lead to exchange of ideas, and help in taking an integrated view of the country as a whole.

The Chief Ministers' conferences occupy the most pivotal position in the conference hierarchy. They discuss various urgent problems of common concern, and take vital decisions. The three-language formula for each State as a measure to strengthen the forces of national integration was evolved at the Chief Ministers' conference in 1961. Similarly, the Chief Ministers' conference in 1963 decided that the policy of prohibition could not be abandoned inspite of loss of revenue on excise.[55]

The State Education Ministers, the State Housing Ministers, the State Finance Ministers, the State Irrigation Ministers, the State Information Ministers and other Ministers of the States also meet regularly to discuss problems of mutual interest and evolve uniform policies. We are giving some recent instances to show the important role played by these conferences. At the conference of the State Finance Ministers in 1963 the important decision

[54] Benjamin N. Schoenfeld, *op. cit*, p 20
[55] *The Statesman*, January 1, 1963

"to introduce uniform rates of sales tax throughout the country in relation to some important commodities" was taken.[36] Similarly, the Education Ministers' conference in 1964 decided that steps should be taken "to achieve a broad measure of uniformity in the content of secondary education".[37] The Housing Ministers conference in October 1962, made a number of major decisions which included freezing of land values, the imposition of a levy on industrialists to finance housing programmes for workers, and the establishment of a standing committee on housing to watch the progress of the programmes in all the States and to ensure that the decisions of the conference were executed.[38]

Although the decisions of these conferences are not endowed with any legal validity, they possess a special sanctity as they are taken by highly competent authorities The value of these meetings lies in adoption of an integrated and cooperative approach towards the solution of the numerous problems which arise under India's federal structure. As N Arunachalam observes, "If these ad hoc meetings should be rationalized and rules evolved with a view to obtain uniformity for as many number of matters as possible as between the States of India vis-a-vis the Union a great deal may be achieved and many administrative difficulties avoided".[39]

[36] *The Statesman*, February 13 and 17, 1963
[37] *Asian Recorder*, May 20-26, 1964
[38] *The Statesman*, October 20, 1962
[39] Quoted in Benjamin N. Schoenfeld, *op. cit.*, p. 20

CHAPTER VIII

EPILOGUE

In this concluding chapter we propose to examine two important questions relating to Union-State relations in India. The first is the claim of India to the rank of a federation, and the second is the nature of the emergent problems confronting Indian federation.

It has been a favourite theme with the traditionalists to brand India as a quasi-federation, since in their opinion there are some dominant features of the Constitution of India which are not in accord with the character of federalism.[1] Their arguments may conveniently be summarised as follows: (*i*) broad grants of power to the Centre, (*ii*) authority of the Centre to interfere in State affairs under Articles 249; and (*iii*) the Centre's power to override the States in times of emergency.

Let us examine the traditionalists' arguments. It is true that the Centre has been endowed with a broad sweep of authority in the Constitution, and our review of the legislative, administrative and financial relations has spotlighted this aspect. But the existence of a strong Centre is not inconsistent with the concept of federalism. What is of real significance is whether the Centre and the States ordinarily enjoy substantial autonomy within the spheres delimited by the Constitution. The lists in the seventh schedule of the Indian Constitution have clearly demarcated the spheres of both Centre and the States, and within their respective fields they are ordinarily supreme.

Centralisation, moreover, has been a universal phenomenon, and the concept of dual sovereignty is almost completely exploded today. While writing in 1947 on 'American Federalism and the Supreme Court' David Fellman aptly put it: "The most important thing that has happened is that the court has snuffed out the heresy of 'dual federalism'."[2] The Court, by invoking the doctrine

[1] See in this connection Wheare, *Federal Government*, p. 28, Schoenfeld, *Federalism in India*, pp. 14-15, and K. P. Mukerji, 'Is India a Federation?' I. J. P. Sc., Vol. 15, July-September, 1954.

[2] *American Political Science Review*, 1947, p. 1142.

of implied powers, has assigned a vast sweep of authority to the Centre. Not only in the legislative field, but also in the spheres of administration and finance there has been a clear trend towards growing centralisation. Centralisation, as we have already seen in the preceding chapters, has been the most significant aspect of the operative machinery not only of American federalism but also of the Australian, Canadian, and Swiss federalism. The consequence of this phenomenon has been certain dilution of the autonomy of the States, and blurring, to some extent, of the spheres of the Centre and the States. A. H. Birch, after a profound examination of the operation of three major federations, America, Canada and Australia, reaches the following significant conclusions: "In the first place, a federal government is not limited to its own sphere when it passes a good deal of legislation relating to matters within the sphere of the state governments, as happens in Canada and the United States in relation to social welfare. (In Australia most powers in this field have been transferred to the federal government by constitutional amendment). In the second place, state governments are not in practice independent of the federal government when they derive a considerable proportion of their revenue from federal payments, as happens in all three federations".[3] Obviously these developments have outgrown the rigid mould of the traditionalists.[4]

Now we may examine the constitutional provision of Article 249. This Article, it may be recalled, empowers the Parliament to legislate on a matter in the State list in national interest on the strength of an express resolution passed by not less than two-thirds of the members present and voting. Thus Article 249 may be invoked only to promote national interest, and the necessary authorisation must come from the Council of States which is supposed to represent the interests of the units of the Indian federation. Besides, the validity of the Parliament-made laws under this Article is confined to a limited period enumerated in the Constitution. Because of these reasons we can say that

[3] *Federalism, Finance and Social Legislation in Canada, Australia and the United States*, p. 290

[4] See Wheare, *op. cit*, p. 15. As Wheare says, "What is necessary for the federal principle is not merely that the general government, like the regional governments, should operate directly upon the people, but, further, that each government should be limited to its own sphere and, within that sphere, should be independent of the other"

Article 249 does not "affect essentially the legislative autonomy of the states and can hardly be quoted in support of quasi-federalism in India".[4] Article 252 which may also be considered does in no way contradict the essence of federalism, for it authorises the Parliament to legislate on a subject in the State list only by express consent of the States.

The emergency provisions of the Constitution no doubt endow the Centre with certain overriding powers. But, as Ambedkar observed, "these overriding powers do not form the normal feature of the Constitution, and their use and operation are expressly confined to emergencies only".[5] Hence, the emergency provisions do not affect the working of the machinery of the Indian federation in ordinary or normal times. Besides, as we have seen, in times of emergency like war, the Centre in every federation wields a very wide range of authority, trenching clearly upon the recognised fields of State action. In Canada a doctrine of emergency powers has already developed, while in the United States and Australia the war and defence powers respectively acquire in time of war such a comprehensive meaning that the federal structure there comes to wear a unitary look. It is of course true that nowhere the Centre has the power to suspend a State constitution as the Union has in India under the emergency provision of Article 356. But in the United States, although the Centre does not possess such power, it has the power to send its troops into a State to enforce the federal statutes or to discharge some federal function Instead of the federal power of armed intervention in a State in the United States, we have in India the power of the Union to suspend a State Constitution in case of a constitutional breakdown.[6]

The provision relating to the amendment of the Constitution may also in this connection be examined. Article 368 of the Indian Constitution provides that the amendment of its federal parts concerning the distribution of powers between the Centre and the States requires ratification by at least one-half of the States. Thus the amending procedure fully accords with the

[4] C. H Alexandrowicz, 'Is India a Federation?' in *International and Comparative Law Quarterly*, Vol 3, 1954

[5] *C.A D.*, Vol XI, p. 977

[6] V. G Ramchandran, 'Is the Constitution of India Federal' in *Supreme Court Journal*, Vol. 22, 1959

spirit of federalism.[1]

In the first chapter we saw how the traditional mould of federalism had broken down under the combined impact of social, economic and political forces. We also emphasised the universal trends and tendencies in all recognised federations. These tendencies have only been reduced to express constitutional provisions in India. India is a federation, for both the Centre and the States here are endowed with juristic status and derive plenary powers from the fundamental law of the land, and both ordinarily enjoy substantial autonomy within their respective fields.

Besides, in examining the question whether a country has a federal Constitution, we must also consider the fact of differences in social situations The traditionalists, who have built up a 'standard type' of federation, ignore this fact, and appear to base their approach on supposed uniformity of social situations. Consequently, the Constitutions, which do not rigidly conform to their standard, are believed to be unfederal or quasi-federal Constitutions. This approach is basically wrong. As Livingston aptly puts it, "we are too prone to say that federal constitutions must contain a certain five or eight or ten characteristics and that all constitutions lacking any of these are not federal Such a set of criteria ignores the fundamental fact that institutions are not the same things in different social and cultural environments".[2] Thus the federal institutions grafted upon the Indian *milieu* cannot be the proto-type of the constitutional structure of the United States which is believed to accord with the traditionalists' set of criteria. The differences reflect the differences in conditions obtaining in these two countries To preserve solidarity of the country in the midst of various powerful fissiparous forces, India naturally started with a strong Centre. But federalism has not suffered in India because of that, for, as we have repeatedly said, the crucial question to consider is whether the Centre and the States have ordinarily substantial autonomy within their constitutionally allocated fields. Beyond this the federal institutions in different countries can reasonably vary according to the peculiar conditions prevailing there. As Alladi, while defending the

[1] It may be noted that K. C. Wheare, the doyen of the traditionalists, finds this amending procedure to be quite balanced and good. See *Modern Constitutions*, p 143

[2] *Federalism and Constitutional Change*, p 6

federal character of Indian Constitution, said, "The problem is one to be faced by each country according to the peculiar conditions obtaining there, according to the particular exigencies of the particular country, not according to *a priori* considerations".[19]

It is also necessary to consider the operation of the Indian federation, for the constitutional theory and practice must be combined together for the purpose of determining the character of a federation. We have seen in the preceding chapter that planning, party and grants have been working in India as powerful centralising forces. But it has also been noted that they meet an almost equally strong challenge from the centrifugal tendencies created by "dynamic linguistic communities as well as by static regional interests". Above all, the growing self-consciousness and self-assertiveness of the regional governments, strengthened by the reorganisation of the States on a unilingual basis, act in India as an important decentralising force. It is not the perpetual mood of revolt of the States against the Centre, but their spirit to assert themselves on crucial issues, which is really the index of the federal spirit. In the preceding chapter we have given some instances to show that this spirit is not lacking in India, and a student of the working of Indian federation can easily multiply these instances.

In the light of the foregoing discussion we can reasonably conclude that India is a federation in both constitutional theory and practice. The dominant spirit of this federation is, however, not one of competitive federalism; it is essentially the spirit of cooperative federalism. Article 252 which provides for delegation of powers to the Centre by the States, Article 263 which authorises the President to set up an inter-State council for coordination between the States, the financial provisions which authorise the Centre to levy or to both levy and collect the taxes for the purpose of distribution by an independent Finance Commission among the States or between the States and the Centre, and the provision of financial assistance to the States under Articles 275 and 282—all these provisions reveal the essentially cooperative character of Indian federation. In its operative processes also inter-governmental cooperation is an important aspect of Indian federation. The development plans are implemented through Centre-State partnership—the Centre mainly providing the finance, and the States

[19] *CAD*, Vol. XI, p. 839

supplying the main administrative machinery. We have also seen how the Indian federation has created zonal councils and a myriad of conference techniques for facilitating inter-level cooperation.

In older federal Constitutions the Centre and the participating units were desired to operate in complete isolation from each other and to remain rigidly confined to their own spheres. But as the problems in the contemporary century constantly transcend the boundaries of each set of authority, so both the Centre and the States are today compelled to come out of their spheres and to cooperate with each other in the task of promoting common welfare. This has inaugurated a new phase, known as cooperative federalism. Inter-governmental cooperation has come to acquire the pride of place in the operative system of the older federations, while the new federal Constitutions have forged a number of links facilitating inter-level cooperation.[11] The development of cooperative federalism has necessarily called for a re-statement of the essentials of federalism which we have already described. Obviously the character of Indian federation needs to be examined in the light of this new approach, and not in the light of the traditionalists' definition of a federal Constitution.

Now we shall examine the prob'ems of the Indian federation. These problems primarily emanate from an imperative need for the integrated development of the country at an accelerated pace in a multilingual federal system, the component units of which sharply vary in size and population and in levels of economic and cultural growth. In order to satisfy this imperative need a system of comprehensive national planning has been built up in India. While planning demands an over-all national approach to the myriad problems of the country and endowing the Centre with sufficient powers, regionalism arises to force a predominantly tribal approach to development and to emphasise on the units as foci of authority. Regionalism, which obtains its sustenance from history and which has been strengthened by the reorganisation of the States on a unilingual basis, constantly expresses itself in disaffection and complaints of the regions against the Centre. The volley of complaints against the Centre made by a number of States before the Second and Third Finance Commissions illustrates increasing Centre-State tension. The complaint is made against growing central

[11] See Birch, *op. cit.*, Ch. 11 and M. Venkatrangaiya, *Competitive and Cooperative Trends in Federalism*, Ch. III

control consequent upon inauguration of five-year plans under which even the matters in the State list such as education, health etc, are being increasingly brought within the orbit of central regulation. Apart from the general discontent of the States, there is a feeling of deep-seated dissatisfaction of the non-Hindi speaking regions against the Centre. Their complaint is that the Centre is controlled by the Hindi-speaking regions, particularly Uttar Pradesh which manipulate the central machinery to promote the aim of establishing their domination over the rest of India. U.P. is the largest State in India, possessing 16 81 per cent of total *population of the country, while the next largest State, Bihar has* 10 59 per cent, Maharashtra 9 02 per cent, Andhra a little over 8 per cent and most of the States much below.[12] Thus the States in India widely vary in respect of population, and this has created serious imbalance in Indian federation. The founding fathers of the Constitution of the United States sought to correct inter-regional imbalance by providing for equal representation of the States in a *powerful Senate In Indian Constitution no such countervailing* device can however be found.

U P. outweighs other States not only in population, but also in political preponderance In the House of the People and the Council of States, U P has 86 (out of 504) and 34 members (out of 226) respectively This massive numerical strength in the final decision-making body enables this State to exert continuous pressure on the Centre and to tilt the latter's balance in its favour. U P.'s political preponderance is also reflected in the composition of the Union Council of Ministers A study made by Robert C. North[13] in 1956 revealed that U P. claimed 28.5 per cent of the total membership of the Council At present out of fifteen members of the Union Cabinet U.P alone has three, whereas the whole of South India has only four representatives Naturally this over-representation of U P in the Union Cabinet creates a feeling of profound mistrust and discontent in other regions, particularly in South India against the Centre which is believed to have deflected from the path of justice

This mistrust swells, as the leaders of the Hindi-speaking areas display a somewhat obstinate attitude on official language issue. Although the Constitution accepted Hindi as the official language

[12] *Census of India* (1961 Census) X and XI

[13] *Leadership and Political Institution in India*, p. 108

of the Union,[14] the zeal with which it is sought to be imposed has encouraged re-thinking on the subject amongst the people of non-Hindi regions. The latter smell an attempt on the part of the people of the Hindi regions to foist their domination over the rest of India.[15] Besides, the people of the non-Hindi areas suspect that the move to make Hindi the sole or principal language for all official transactions has the ulterior motive of excluding them from certain categories of jobs in central government and big commercial firms. Such fears are reflected not only in animosity against the Hindi region, but also in certain discord with the Centre which is looked upon in the non-Hindi regions as a mighty engine facilitating Hindi dominance.[16]

Fears of Hindi hegemony are not the only source of inter-regional tension and conflicts. Frictions between different regions, each of which is dominated by a homogeneous language-group, characterise Indian federation. They arise primarily from huge disparity between these units in levels of economic and cultural growth. The relatively depressed units constantly smart under a deep sense of neglect and resentment. This feeling finds expression in linguistic agitations and riots. The principal objective of the sponsors of these movements who are mostly middle class politicians is not to preserve and promote their "holy" cultures, but to drive out men of other language units who are considered to be "usurpers" in their so-called home lands and thus to make the jobs and positions their exclusive possession. As Dr. Mukerji and Mrs. Ramaswami observe, "It is the middle class job-hunter and place-hunter and the (mostly) middle-class politician who are benefited by the establishment of a linguistic state, which creates for them an exclusive preserve of jobs, offices and places by shutting out, in the name of the promotion of culture, all outside

[14] Article 343(1)

[15] How the acceptance of Hindi as official language will lead to discrimination in privileges and will create two classes of citizens in India is well brought out in S. K. Chatterji's note of dissent in the *Report of the Official Language Commission* (p. 276). "Class I citizens with Hindi as their language, obtaining an immense amount of special privileges by virtue of their language only and Class II citizens who will be suffering from permanent disabilities by reason also of their language". See also P. Subbarayan's note of dissent, *Report*, pp. 315-321.

[16] It is true that such fears are frequently exaggerated. But their wide prevalence in non-Hindi areas is an obstinate fact.

competitors".[17]

Linguistic regionalism has emerged in India as a powerful lobby for securing as much spoils of development as possible for a particular region, and regional needs are constantly pressed at the expense of overall national needs. Consequently, national planning has to suffer. Planning in India, the principal objective of which is optimum allocation of limited resources, demands central direction of the tune of development. But regional pulls and pressures tend to distort the choice of priorities and locations. Whenever it is proposed to set up a new industrial plant in the public sector, the linguistic regions vie with one another and put divergent pressures upon the Centre to locate the plant in a particular region, the motive being to get "the biggest slice of the economic cake". As Asoka Mehta aptly puts it, "Linguistic *irredentism* has led to a scramble: the limited resources of the country are to be pushed and pulled by the linguistic lobbies".[18] In this scramble between regions it is frequently forgotten that in a system of planning the nation is in a large measure one economic unit.

These inter-regional jealousies and rivalries, and Centre-region tension create profound strains in the operative machinery of Indian federation which at times appear to be unbearable. That this machinery does not completely break down, is largely due to a single party rule all over the country. The Congress Party's monopoly of power and the unity of this organisation hold up at least for a temporary period the forces of disintegration But both till recently could be ascribed to a great extent to the unique personality of Nehru who, by continuously leading his party to power and by preserving the party solidarity contributed in an astonishingly big way in arresting the disruption of the Union. With the removal of this charismatic leadership, the differences within Indian society are likely to grow more manifest.

Tension between Centre and regions, and between regions *inter se* tends to sap the emergent spirit of cooperative federalism in India. Besides, after the demise of Nehru "the unifying element of political leadership in India" is not as great as in the past, and naturally the divisive trends in future will in all probability be sharper and more articulate. Consequently, the strain will be

[17] *Reorganisation of Indian States*, p. 31.
[18] *Politics of Planned Economy*, p. 31.

excessive, and that may lead to a virtual break-down of India's federal system. As this danger looms large on the horizon, so India's federation must be able to devise new ways of overcoming it.

We have referred to the imbalance in Indian federation created by huge disparity in size and population of the constituent units. We have also seen how this disparity has displayed itself in the preponderance of Uttar Pradesh. K. M. Panikkar suggested bifurcation of U.P. into two States in order to correct this imbalance.[19] But this suggestion appears to have overlooked the fact that U P's preponderance is merely the focus of Hindi dominion. Hence, what is required most is to offset the dominating power of the Hindi regions as such The best way to deal with the problem seems to make the Council of States an exact replica of American Senate through necessary amendment of the Constitution First, the Council must be re-constituted on the basis of equal representation of the units, and secondly, it must be made as powerful as the American Senate. A powerful Council, with the units equally represented in it, will go a long way in limiting the influence of the Hindi-speaking regions and thus will ensure a proper federal balance. We have seen that much of the animosity between Hindi and non-Hindi areas and growing distrust of the Centre by the latter are due to the adoption of Hindi as the official language. Hindi, although dominant, is not quite the language of the majority.[20] The Hindi enthusiasts however assert that as a dominant language it should at once be adopted as the official language of the Union And inevitably this has created imbalance and instability in India's federal system. Switzerland's multi-lingual stability has been explained by the fact that German, although it is a language of 72 per cent of the people, has not been foisted upon the whole country.[21] As the rivals of Hindi "are sufficiently strong to have a sense of their own importance and destiny", and moreover, as some of them far surpass Hindi in literary grandeur, so the attempt to force Hindi on the whole nation has created a powerful wave of discontent in

[19] See 'Note on Uttar Pradesh' in *Report of the States Reorganisation Commission*, pp. 244-252.

[20] According to the language tables of the 1961 census released recently by the census commissioner, about 30 per cent of the Country's population had pure Hindi as mother tongue.

[21] Selig S. Harrison, *India : The Most Dangerous Decades*, p. 304

the non-Hindi areas.[23] Besides, Hindi as the official language is equated in non-Hindi areas with Hindi as an instrument of political and economic domination. In view of sharp cleavage between Hindi and non-Hindi areas on the issue of Hindi as the official language, it is necessary to amend the Constitution and to replace Hindi by "a neutral language as the official language of the Union".[23] English is the only language known to India which, because of its non-involvement in the inter-regional balance of power, admirably fulfils this purpose. Hindi should be made the national language to be used on ceremonial occasions. With English adopted as the official language and Hindi as the national language the feeling of enmity between Hindi and non-Hindi regions and of distrust of the Centre by the latter would largely pass away, and that would impart stability to India's federal system.[24]

[22] *Ibid*, p. 305.

[23] N. C. Roy, *Federalism and Linguistic States*, p. 254.

[24] It may be mentioned in this connection that two important members of the Official Language Commission, S K. Chatterji and P. Subbarayan in separate notes of dissent, suggested putting the question of progressive use of Hindi for official purposes of the Union in cold storage for the time being as it might put the Union under excessive strain. See *Report*, pp 307-308, and p 326.

The latest developments on language issue can be outlined. One such development is the Official Language Act, 1963 under which English "may continue to be used in addition to Hindi for all the official purposes of the Union" even after the expiration of the period of fifteen years from the commencement of the Constitution. In fact, it would mainly mean: (1) all official transactions of the Union would be made from January 26, 1965 in Hindi as well as English, and (2) Hindi would be introduced as an alternative medium of examination in the I.A.S and other Central Services Examinations from September, 1965 When the Language Act, 1963 was sought to be implemented from January 26, 1965, a powerful wave of stubborn resistance overtook the whole of South India Naturally the issue on language came to be reconsidered. The Congress Working Committee met and adopted a resolution The resolution asked the Central and State Governments to "examine the steps that should be taken, including amendments to the Official Language Act of 1963, to give effect to the assurances given by Jawaharlal Nehru" on the continuance of English as an additional or associate official language It further recommended that "as soon as possible" examinations for All India services should be held in Hindi, English and all regional languages with an option to choose any of these languages

On May 24, 1965 the Union Cabinet endorsed a draft Bill to amend the Official Language Act of 1963. It provides for bilingualism for an indefi-

Conflicts between different language units in India engender instability in her federation, and at times they become enormously powerful to threaten her national existence. The history of agitations for uni-lingual States and the failure of multi-lingual experiment in Bombay prove beyond doubt that the remedy of linguistic *irredentism* does not lie "in deliberately creating multi-lingual States in none of which will any language group have a dominating position".[25] Nor can the problem be solved by adoption of B. N. Rau's somewhat cumbrous scheme under which the linguistic areas are to be made sub-provinces within a multi-lingual province "on the analogy of Croatia in Hungary before World War I or the two parts of Ireland under the Act of 1920".[26] Any drastic reversal of the existing system is neither feasible nor desirable.

Regional balance in economic and cultural development is an important factor for facilitating inter regional harmony, for both pettiness of under-development and arrogance of development impede the growth of real harmony. To attain such balance in cultural development is not difficult, and education plans may be directed to the fulfilment of this purpose. But in the "take off period", which India is undergoing at present, when the choice of priorities and locations of big industrial projects must be governed by the economic consideration of highest returns within briefest time-periods, it is extremely difficult to attain sufficient regional balance in economic development.[27] But it is the imperative need to reduce to some extent economic imbalance between

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nite period until all the States agree to switch over to Hindi. It has further been decided that all the 14 regional languages shall be introduced as media of I.A.S. and other Central Services Examinations. This appears to be an undesirable and unworkable scheme. It is apprehended that the problem of moderation of the question-papers or of evaluation of the scripts will be rendered extremely difficult, and the qualities of the administrative cadre are likely to decline. Continued use of English as the medium of Central competitive examinations is, therefore, favoured by a large number of educational experts in India.

[25] Dr. Mukerji and Mrs. Ramaswami, *op cit*, p. 40.

[26] *India's Constitution in the Making*, p. 171.

[27] The Planning Commission also feels that regional balance is difficut to attain in early phases of economic development, for "as resources are limited, frequently advantage lies in concentrating them at those points within the economy at which the returns are likely to be favourable". See *Third Five Year Plan*, p. 142.

regions, and for this greater reliance should be placed on development of small industries, and schemes of agricultural and community development.

Another effective way of reducing inter-regional jealousies and conflicts is the development of what may be called federal ethics. Equitable distribution of important offices of the Central Government amongst the component units is necessary for successful operation of a federation. The over-representation of some States *and the noticeably under-representation of others in the Union* Cabinet must go, and the Cabinet must be equally representative of all the units. Similarly, the prestige posts like the Presidentship and Vice-Presidentship, Speakership and Deputy-Speakership of the House of the People, need to be rotated. This will endear the Centre to the regions, and help in reducing inter-regional jealousies.

Two other ways for minimising the strains present in the operative system of Indian federation are re-orientation of education, and development of a code of conduct for the political parties and the press.[21] The problem of arrogant linguistic regionalism can, in ultimate analysis, be spelt in terms of attitudes of the language groups Education is an effective instrument for rationalising these attitudes, and hence, the system of education should be so reoriented as to inculcate in the youth the virtues of tolerance, discipline and respect for India's composite culture. Codes of conduct need to be formulated for the political parties and the press. They must not indulge in any sort of activity that may accentuate the existing cleavage or create mutual tension or produce mutual enmity between regions

The passing away of Nehru has weakened Central leadership in India. One likely effect of this is the decline of the Congress and ascendency of Opposition in some States. The other likely effect is the growth of powerful centrifugal pressures within the Congress. It appears from a careful study of political trends in post-Nehru India that the latter is more probable. If these developments actually take place, the sense of self-consciousness and self-assertiveness of the regional governments, which is to some extent baulked to-day by the rule of a highly centralised party all over the country, will grow stronger. But this gain to politics of federalism will be

[21] See *Statement issued by the National Integration Conference* (Sept.-Oct. 1961), pp. 6-12.

a loss to economics of development. In India, however, the aims of federalism and planning have to be harmonised, for the failure of planning will aggravate inter-regional imbalance and tension, and will thus put India's federation under more severe strain. If Indian politics after Nehru takes the shape as indicated above, the emergent problem-situation could then be tackled on the lines suggested by Karl Mannheim in connection with problems of democracy in a planned economy. Mannheim suggested the creation of "a unified political will by voluntary agreement on the part of rival social groups" for overcoming the difficulties introduced by planning in a democracy.[30] Similarly, an agreement in the sphere of development and planning among the political parties in India will have to be created. Unless such agreement eventually emerges, the future political urges for greater "state rights" will seriously thwart India's development. Regionalism will vigorously be stressed at the expense of over-all national needs, competition at the expense of cooperation. Hence, a durable basis for continuous operation of cooperative federalism in India can be provided only through development of a political consensus in the sector of planning. Obviously for this the creation of necessary community-consciousness is an imperative need.

[30] *Freedom, Power and Democratic Planning*, p. 35.

APPENDIX A

SUPPLEMENTARY NOTES

1. Recent Developments in India's Federal Structure.

Since the book was planned and thoughtout, a few significant developments relevant to Union-State relations in India have taken place. Perhaps the most important development has been a pronounced centrifugal tendency in India's federal system With the death of Nehru, the charismatic leadership was removed from Indian politics Some kind of collective leadership emerged within the ruling party. But the new leadership was not as powerful as Nehru's It lacked adequate thrust and focus Consequently, national leadership became comparatively weak, and centrifugal forces came to receive a stimulus In early 1965 a powerful movement was launched in non-Hindi areas against the official language policy, and national leadership had to bow down before it The Congress Working Committee felt compelled to adopt a cumbrous and inexpedient language policy permitting all the 14 languages to be offered as media for examinations for all-India services, and the policy was approved by the Union Government Various other centrifugal tendencies including renewal of Punjabi Suba demand also became manifest.

In the third quarter of 1965 Pakistan made an open aggression upon India The nation received a new awakening The people of India forgot all their differences and stood to a man against the menace This sense of national unity was further strengthened by significant victories scored by India in military operations against Pakistan. Shastri attained a lofty stature, and national leadership became increasingly powerful.

Soon a tragedy occured, and the centrifugal forces staged a come back Shastri died at Tashkent on January 11, 1966 It dealt a severe blow to national leadership and created a political void The division within the ruling party became soon manifest The Congress High Command made frantic efforts for having an unanimous election of Shastri's successor, but all these proved futile The party was sharply split up into two factions—pro-High Command and anti-High Command Mrs. Gandhi whose candidature was sponsored by the High Command secured 355 votes, whereas Mr. Desai got 169 votes in the contest for leadership of the Congress Parliamentary party. The fact that Desai could secure so many votes despite opposition from almost all top leaders of the party, is indicative of a large measure of resentment and disunity within the ruling party.[1]

[1] As The Amrita Bazar Patrika (a very influential pro-Congress daily) commenting on the recently held Jaipur Session of the Congress said: "Mr Kamraj's repeated appeal to co-operate with Mrs Gandhi's Government was indicative of disunity among the leadership and the rank and file and cleavage widened by polarisation of forces The Jaipur session, as it appears from the events, hardly helped the leadership to emerge as a

Another important aspect of the contest for leadership was that the Chief Ministers of States signed a statement requesting Mr. Kamaraj to sponsor Mrs. Gandhi as Shastri's successor. Thus the State Chief Ministers played an active and possibly a decisive role in the choice of the leader of the Congress Parliamentary Party. This appeared to be a powerful regional intrusion into federal politics.

The Congress Working Committee's accession to the demand for a Punjabi-speaking State which reverses the Congress thinking on the subject is another instance of victory of regionalism.

Regionalism is thus very powerful in India to-day. Regional pulls and pressures tend to disturb the process of development and planning. The choice of industrial locations is being increasingly distorted by regional politics. Besides, regionalism is impeding the development of a unified national food policy, although the country is in the grip of an acute food crisis. A national agency like the Food Corporation of India cannot operate efficiently due to lack of co-operation from the surplus states. As Mr T A. Pai, former chairman of the Corporation said—"Under the British rule the country was treated as one unit and a much more effective food policy was possible. But after the creation of linguistic States, an integrated policy had become strangely difficult."[2]

This is the state of affairs in a federal system dominated by a uni-party rule all over the country. Should the differences within the ruling party become sharper or should the Opposition capture governmental power in some States in the coming elections, centrifugal forces would receive further encouragement. As the recent trends in regional politics indicate, the Congress will face a tough competition, particularly in West Bengal, Orissa and Kerala, and may lose its political dominance in these States. If these calculations come out true, national planning will suffer a severe strain, Centre-State discord will reach a new height, and inter-regional tension will aggravate.

It appears from the foregoing discussion that the basic problem confronting India's federal system to-day is to evolve ways of containing centrifugal forces, and this is really the problem of a federation engaged in the task of essaying a comprehensive social and economic development within briefest time-period.

2. Report Of The Fourth Finance Commission.

The Fourth Finance Commission submitted its report in 1965 and its recommendations were accepted by the government. The report provides a distinct approach to the Union-State financial relations. The Commission for practical reasons excluded from its consideration the plan expenditure of the States, and "confined itself to non plan revenue expenditure vis-a vis the revenue receipts anticipated in the coming five year period on the

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collective one to fill the void." (The Amrita Bazar Patrika, February 12, 1966).

[2] THE STATESMAN, December 28, 1965. The success with which the States have resisted the attempt of the Centre to abolish the food zones, is indicative of a powerful centrifugal pressure in India's federal system.

basis of taxation levels in *1965 66.*"[1] It apprehended that its consideration of the States' plan expenditure would tend to disturb the institutional arrangements in regard to plans.

In regard to distribution of divisible taxes and duties, the Commission adopted an approach somewhat different from that of its predecessors. It did not take budgetary gaps as a criterion for distribution mainly on the ground that the Constitution did not warrant that As the Commission said: "In regard to income-tax, the Constitution does not say that it should be distributed on the basis of budgetary needs. In fact, however great the budgetary needs, a State will not get a share, if for some reason or other, the tax is not leviable in that State. And even where there is no budgetary need in a particular case, a State cannot be denied some share in the income tax proceeds if the tax happens to be levied in that State. In the case of the Union excises also, the provisions are almost similar."[2] The Commission felt that grants-in-aid under Article 275 could only be used for correcting budgetary deficits

The Commission raised the States' share of the divisible pool of income tax from 662/3% to 75%. It, however, recommended that the share of each State would continue to be determined on the basis of *80%* on population and 20% on collection The Commission also recommended the fixation of the States' share of excise duties at 20% of the net proceeds of all Union excise duties.

The Commission found itself in broad agreement with the principles adumbrated by the previous Commissions in regard to grants in-aid, but *it disfavoured the inclusion of plan grants within the purview of grants-*in aid under Article 275 in order to avoid any disturbing effect upon planning mechanism in India. The Commission considered the fiscal needs of the States, and found that ten States would have revenue deficits much in excess of the sums which they would receive as shares of divisible taxes and duties. It recommended a total grants-in aid of Rs 121 89 crores under Article 275 to these States for correcting their deficits

This method of correcting revenue deficits is, however, subject to criticism. It is likely to tempt the States to manipulate their budgets in order to show recurring deficits, and thus to obtain grants. This method has been followed in West Indies and has suffered a signal failure there.[3]

3. Transfer Of Resources (Shared taxes+Grants+Loans) from Centre to The State.

TABLE I

Year	*In Crores of Rupees*
1962-63	969 80
1963 64	1,114 71
1964-65	1,223 32
1965-66	1,445 99

Source: Reserve Bank of India Bulletin March, 1966.

[1] *Report*, p. 8 [2] *Ibid*, p 9

[3] U. K. Hicks, 'Some Fundamental Problems of Federal Finance,' (*Capital*, Annual Number, December 23, 1965).

TABLE II

Area and Population of States, 1961 Census

States	Area (In sq. miles)	Population (In thousands)
1. Andhra Pradesh	106,286	35,983
2. Assam	47,091	11,873
3 Bihar	67,196	46,456
4. Gujarat	72,245	20,633
5. Jammu and Kashmir	86 023	3,561
6 Kerala	15,002	16,904
7. Madhya Pradesh	171,217	32,372
8 Madras	50,331	33,687
9 Maharashtra	118,717	39,554
10. Mysore	74,210	23,587
11. Nagaland	6,366	369
12. Orissa	60,164	17,549
13. Punjab	47,205	20,307
14. Rajasthan	132,152	20,156
15 Uttar Pradesh	115,654	73,746
16 West Bengal	33,829	34,926

Source: Census of India, 1961

Notes. (i) Union Territories are not included in this table.

Notes: (ii) The figures for Jammu and Kashmir are taken from the latest estimates of the Surveyor General of India.

APPENDIX B

CONSTITUTION OF INDIA

Seventh Schedule [Article 246]

List I—Union List

1. Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination to effective demobilisation

2 Naval, military and air forces ; any other armed forces of the Union

[1]3. Delimitation of cantonment areas, local self government in such areas, the constitution and powers within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas.

4. Naval, military and air force works

[1] In its application to the State of Jammu and Kashmir, for entry 3, the *following entry shall be substituted, namely:—*

"3. Administration of cantonments".

5. Arms, firearms, ammunition and explosives.

6. Atomic energy and mineral resources necessary for its production.

7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.

[18] 8. Central Bureau of Intelligence and Investigation.

[19] 9. Preventive detention for reasons connected with Defence, Foreign Affairs, or the security of India; persons subjected to such detention.

10. Foreign affairs; all matters which bring the Union into relation with any foreign country.

11. Diplomatic, consular and trade representation.

12. United Nations Organisation.

13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.

14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

15. War and peace.

16. Foreign jurisdiction.

17. Citizenship, naturalisation and aliens.

18. Extradition.

19. Admission into, and emigration and expulsion from, India; passports and visas.

20. Pilgrimages to places outside India.

21. Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air.

22. Railways.

23 Highways declared by or under law made by Parliament to be national highways.

24. Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels; the rule of the road on such waterways.

25. Maritime shipping and navigation, including shipping and navigation on tidal waters; provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies.

26. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

27. Ports declared by or under law made by Parliament or existing law to be major ports, including their delimitation, and the constitution and powers of port authorities therein.

28. Port quarantine, including hospitals connected therewith; seamen's and marine hospitals.

29 Airways; aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.

[18] Not applicable to the State of Jammu and Kashmir.

30 Carriage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels

31. Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication

32. Property of the Union and the revenue therefrom, but as regards property situated in a State [1] * * subject to legislation by the State, save in so far as Parliament by law otherwise provides.

* * * * *

[2][3]34 Courts of Wards for the estates of Rulers of Indian States

35 Public debt of the Union

36 Currency, coinage and legal tender; foreign exchange.

37. Foreign loans.

38 Reserve Bank of India.

39 Post Office Savings Bank

40 Lotteries organised by the Government of India or the Government of a State

41 Trade and commerce with foreign countries; import and export across customs frontiers, definition of customs frontiers

42 Inter-State trade and commerce

[4]43. Incorporation, regulation and winding up of trading corporations, *including banking, insurance and financial corporations but not including* co-operative societies.

[5]44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities

45 Banking

46 Bills of exchange, cheques, promissory notes and other like instruments.

47 Insurance

48 Stock exchanges and futures markets.

49 Patents, inventions and designs; copyright; trade-marks and merchandise marks

50 Establishment of standards of weight and measure.

51 Establishment of standards of quality for goods to be exported out of India or transported from one State to another.

52 Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

53. Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products, other liquids and substances declared by Parliament by law to be dangerously inflammable

[1] *The words and letters "specified in Part A or Part B of the First* Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

[2] Entry 33 omitted by s 26, *ibid.*

[3] *Not applicable to the State of Jammu and Kashmir*

[4] In its application to the State of Jammu and Kashmir, in entry 43, the words "trading corporations, including" shall be omitted

[5] In its application to the State of Jammu and Kashmir, in entry 44, after the words "but not including universities", the words "in so far as such corporations relate to the legal and medical professions" shall be inserted.

54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

55. Regulation of labour and safety in *mines and oilfields*

56. Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

57. Fishing and fisheries *beyond territorial waters*

58 Manufacture, supply and distribution of salt by Union agencies; regulation and control of manufacture, supply and distribution of salt by other agencies.

59 Cultivation, manufacture, and sale for export, of opium.

[1]*60 Sanctioning of cinematograph films for exhibition.*

61. Industrial disputes concerning Union employees.

62. The institutions known at the commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and the Indian War Memorial, and any other like institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance.

63 The institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University and the Delhi University, and any other institution declared by Parliament by law to be an institution of national importance.

64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.

65 Union agencies and institutions for—

(*a*) professional, vocational or technical training, including the training of police officers; or

(*b*) the promotion of special studies or research; or

(*c*) scientific or technical assistance in the investigation or detection of crime.

66 Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions

[2]67. Ancient and historical monuments and records, and archaeological sites and remains, [3][declared by or under law made by Parliament] to be of national importance.

68 The survey of India, the Geological, Botanical, Zoological and *Anthropological Surveys of India; Meteorological organisations.*

69. Census

70. Union public services, all India services, Union Public Service Commission.

[1] Not applicable to the State of Jammu and Kashmir

[2] In its application to the State of Jammu and Kashmir, in entry 67, the words "and records" shall be omitted.

[3] Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 27, for "declared by Parliament by law".

71. Union pensions, that is to say, pensions payable by the Government of India or out of the Consolidated Fund of India

[1]72. Elections to Parliament, to the Legislatures of States and to the offices of President and Vice-President; the Election Commission.

73. Salaries and allowances of members of Parliament, the Chairman and Deputy Chairman of the Council of States and the Speaker and Deputy Speaker of the House of the People.

74 Powers, privileges and immunities of each House of Parliament and of the members and the committees of each House; enforcement of attendance of persons for giving evidence or producing documents before committees of Parliament or commissions appointed by Parliament.

75 Emoluments, allowances, privileges, and rights in respect of leave of absence, of the President and Governors; salaries and allowances of the Ministers for the Union; the salaries, allowances, and rights in respect of leave of absence and other conditions of service of the Comptroller and Auditor-General.

76 Audit of the accounts of the Union and of the States

77 Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court.

[2]78. Constitution and organisation [3][(including vacations)] of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before the High Courts

[4]['79 Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from, any Union territory.]

80 Extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside that State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the Government of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State.

[5]81 Inter-State migration, inter State quarantine

82. Taxes on income other than agricultural income

83. Duties of customs including export duties.

84. Duties of excise on tobacco and other goods manufactured or produced in India except—

(*a*) alcoholic liquors for human consumption,

(*b*) opium, Indian hemp and other narcotic drugs and narcotics,

[1] In its application to the State of Jammu and Kashmir, in entry 72, the reference to the States shall be construed as not including a reference to the State of Jammu and Kashmir.

[2] Not applicable to the State of Jammu and Kashmir

[3] Ins. by the Constitution (Fifteenth Amendment) Act, 1963, s. 12 (with retrospective effect)

[4] Subs by the Constitution (Seventh Amendment) Act, 1956, s 29 and Sch.

[5] In its application to the State of Jammu and Kashmir, in entry 81, the words "Inter State migration;" shall be omitted.

but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (*b*) of this entry.

85 Corporation tax.

86 Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.

87. Estate duty in respect of property other than agricultural land.

88 Duties in respect of succession to property other than agricultural land.

89. Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights

90 Taxes other than stamp duties on transactions in stock exchanges and futures markets

91 Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts published therein.

[1][92A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce]

93 Offences against laws with respect to any of the matters in this List.

94 Inquiries, surveys and statistics for the purpose of any of the matters in this List.

95 Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List; admiralty jurisdiction.

96. Fees in respect of any of the matters in this List, but not including fees taken in any Court.

[1]97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

[2]List II—State List

1. Public order (but not including the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power)

2. Police, including railway and village police.

3. Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Court; officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.

4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions.

5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

6 Public health and sanitation; hospitals and dispensaries.

7. Pilgrimages, other than pilgrimages to places outside India.

[1] Ins by the Constitution (Sixth Amendment) Act, 1956, s. 2

[2] Not applicable to the State of Jammu and Kashmir.

8 *Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.*

9. Relief of the disabled and unemployable

10 Burials and burial grounds; cremations and cremation grounds.

11 Education including universities, subject to the provisions of entries 63, 64, 65 and 66 of List I and entry 25 of List III.

12. Libraries, museums and other similar institutions controlled or financed by the State, ancient and historical monuments and records other than those [1][declared by or under law made by Parliament] to be of national importance

13 Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways; ropeways, inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.

14 Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

15 Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice

16. Pounds and the prevention of cattle trespass.

17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.

18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization

19 Forests.

20 Protection of wild animals and birds.

21. Fisheries

22 Courts of Wards subject to the provisions of entry 34 of List I; encumbered and attached estates

23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.

24 Industries subject to the provisions of [2][entries 7 and 52] of List I

25 Gas and gas-works

26. Trade and commerce within the State subject to the provisions of entry 33 of List III

27. Production, supply and distribution of goods subject to the provisions of entry 33 of List III.

28 Markets and fairs

29 Weights and measures except establishment of standards.

30. Money lending and money lenders; relief of agricultural indebtedness

[1] Subs by the Constitution (Seventh Amendment) Act, 1956, s 27, for "declared by Parliament by law".

[2] Subs by the Constitution (Seventh Amendment) Act, 1956, s 28, for "entry 52".

31. Inns and inn keepers.

32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations, co-operative societies.

33. Theatres and dramatic performances; cinemas subject to the provisions of entry 60 of List I; sports, entertainments and amusements.

34. Betting and gambling.

35. Works, lands and buildings vested in or in the possession of the State.

[1] * * * * *

37. *Elections to the Legislature of the State subject to the provisions of* any law made by Parliament.

38. Salaries and allowances of members of the Legislature of the State, of the Speaker and Deputy Speaker of the Legislative Assembly and, if there is a Legislative Council, of the Chairman and Deputy Chairman thereof.

39. Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof and, if there is a Legislative Council, of that Council and of the members and the committees thereof; enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the State

40. Salaries and allowances of Ministers for the State.

41. *State public services; State Public Service Commission.*

42 State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State.

43. Public debt of the State.

44. Treasure trove.

45. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.

46. Taxes on agricultural income

47. Duties in respect of succession to agricultural land.

48 Estate duty in respect of agricultural land.

49. Taxes on lands and buildings

50 Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.

51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:—

(*a*) alcoholic liquors for human consumption,

(*b*) opium, Indian hemp and other narcotic drugs and narcotics;

but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (*b*) of this entry

52. Taxes on the entry of goods into a local area for consumption, use or sale therein.

53. Taxes on the consumption or sale of electricity

[1] Entry 36 omitted by the Constitution (Seventh Amendment) Act, 1956, s. 26.

[1][54. *Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I.*]

55 Taxes on advertisements other than advertisements published in the newspapers

56 Taxes on goods and passengers carried by road or on inland waterways

57. *Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provision of entry 35 of List III*

58 Taxes on animals and boats

59 Tolls

60 Taxes on *professions, trades, callings and employments.*

61 Capitation taxes.

62 Taxes on luxuries, including taxes on entertainments, amusements betting and gambling

63 Rates of stamp duty in respect of documents other than those specified *in the provisions of List I with regard to rates of stamp duty.*

64 Offences against laws with respect to any of the matters in this List

65 Jurisdiction and powers of all courts, except the Supreme Court with respect to any of the matters in this List.

66. Fees in respect of any of the matters in this List, but not including *fees taken in any court.*

List III—Concurrent List

[2][1. Criminal law, including all matters included in the Indian Penal Code at the commencement *of this Constitution but excluding offences against* laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power

[3]2. Criminal procedure, including all matters included in the Code of *Criminal Procedure at the commencement of this Constitution*

[4]3 Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community, persons subjected to such detention

[4]4 Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons specified in entry 3 of this List.

[4]5. Marriage and divorce; infants and minors; adoption; wills, intestacy and succession, joint family and partition, all matters in respect of which

[1] Subs. by the Constitution (Sixth Amendment) Act, 1956, s 2, for the original entry 54.

[2] In its application to the State of Jammu and Kashmir, for entry 1, the following entry shall be substituted, namely —

"1. Criminal law (excluding offences against laws with respect to any of the matters specified in List I and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power) in so far as such criminal law relates to offences against laws with respect to any of the matters specified in this list.".

[3] Not applicable to the State of Jammu and Kashmir.

parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

[1]6 Transfer of property other than agricultural land; registration of deeds and documents

[1]7. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.

[1]8. Actionable wrongs.

[1]9. Bankruptcy and insolvency.

[1]10 Trust and Trustees.

[1]11. Administrators-general and official trustees

[1]12 Evidence and oaths; recognition of laws, public acts and records, and judicial proceedings

[1]13 Civil procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration.

[1]14. Contempt of court, but not including contempt of the Supreme Court.

[1]15 Vagrancy; nomadic and migratory tribes

[1]16. *Lunacy and mental deficiency, including places for the reception or* treatment of lunatics and mental deficients.

[1]17. Prevention of cruelty to animals

[1]18. Adulteration of foodstuffs and other goods

[1]19. Drugs and poisons, subject to the provisions of entry 59 of List I with respect to opium.

[1]20 Economic and social planning

[1]21. Commercial and industrial monopolies, combines and trusts

[1]22. Trade unions; industrial and labour disputes

[1]23 Social security and social insurance; employment and unemployment.

[2]24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.

25. Vocational and technical training of labour

[3]26. Legal, medical and other professions

[4]27. *Relief and rehabilitation of persons displaced from their original place* of residence by reason of the setting up of the Dominions of India and Pakistan.

[4]28. Charities and charitable institutions, charitable and religious endowments and religious institutions

[4]29. Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants

[1] Not applicable to the State of Jammu and Kashmir.

[2] In its application to the State of Jammu and Kashmir, in entry 24, after the words "and maternity benefits", the words "but only with respect to labour employed in the coal mining industry" shall be inserted.

[3] In its application to the State of Jammu and Kashmir, for entry 26, the following entry shall be substituted, namely:—

"26. Legal and medical professions".

[4] Not applicable to the State of Jammu and Kashmir

[1]30 Vital statistics including registration of births and deaths.

[2]31 Ports other than those declared by or under law made by Parliament of existing law to be major ports

[2]32 Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to national waterways

[3][[4]33 Trade and commerce in, and the production, supply and distribution of,—

(*a*) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products,

(*b*) foodstuffs, including edible oilseeds and oils;

(*c*) cattle fodder, including oilcakes and other concentrates;

(*d*) raw cotton, whether ginned or unginned, and cotton seed; and

(*e*) raw jute]

[2]34 Price control

[2]35. *Mechanically propelled vehicles including the principles on* which taxes on such vehicles are to be levied

[2]36 *Factories*

[2]37 Boilers

[2]38 *Electricity.*

39 Newspapers, books and printing presses

[2]40 *Archaeological sites and remains other than those* [5][*declared by or* under law made by Parliament] to be of national importance.

[2]41 Custody, management and *disposal of property (including agricultural* land) declared by law to be evacuee property.

[6][[7]42 Acquisition and requisitioning of property]

[8]43. Recovery in a State of claims in respect of taxes and other public

[1] In its application to the State of Jammu and Kashmir, for entry 30, the following entry shall be substituted, namely:—

"30 Vital Statistics *in so far as they relate to births and deaths including* registration of births and deaths"

[2] Not applicable to the State of Jammu and Kashmir.

[3] Subs by the Constitution (Third Amendment) Act, 1954, s. 2.

[4] In its application to the State of Jammu and Kashmir, for entry 33, the following entry shall be substituted, namely —

"33 Trade and commerce in, and the production, supply and distribution of, the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, in so far as such industry relates to gold, and imported goods of the same kind as such products."

[5] In its application to the State of Jammu and Kashmir, for entry 34, the following entry shall be substituted, namely:—

"34 Price control of gold"

[6] Subs by the Constitution (Seventh Amendment) Act, 1956, s. 27, for "declared by Parliament by law".

[7] Subs by s 26, *ibid*, for the original entry 42

[8] Not applicable to the State of Jammu and Kashmir

demands, including arrears of land-revenue and sums recoverable as such arrears, arising outside that State.

[1][44] Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

[2]45. Inquiries and statistics for the purposes of any of the matters specified in List II or List III.

46 Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

47. Fees in respect of any of the matters in this List, but not including fees taken in any court.

[1] Not applicable to the State of Jammu and Kashmir.

[2] In its application to the State of Jammu and Kashmir, in entry 45, for the words and figures "List II or List III", the words "this List" shall be substituted.

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